

(29,859)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 169

STANDARD OIL COMPANY OF NEW JERSEY, AS OWNER,  
ETC., OF THE STEAMSHIP "LLAMA," PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Original	Print
Record from the United States district court of New Jersey....	1	1
Docket entries.....	1	1
Libel .....	3	2
Exhibit A—Insurance policy on ship.....	14	8
Exhibit B—Insurance policy on freight.....	19	10
Cost bond.....(omitted in printing)..	24	13
Stipulation re extension of time.....	27	13
Answer .....	28	13
Order of substitution.....	32	15
Testimony of Christian P. Jensen.....	33	16
Thomas Edward Clinch.....	62	37
Valentine Stuart Cox.....	98	63
David Cunningham.....	129	86
Ernest Edward Knight.....	132	88
Ernest Brown.....	133	89
Walter Midwood Johnson.....	134	90
Valentine Stuart Cox (recalled).....	135	91
Government's Exhibit No. 2—Letter from British ad- miralty to British foreign office.....	137	92

	Original	Print
Colloquy of court and counsel.....	140	94
Testimony of Robert F. Hand.....	146	98
Argument of counsel.....	155	104
Memorandum opinion, Lynch, J.....	159	106
Final decree.....	167	111
Notice of settlement.....	172	113
Notice of appeal.....	174	114
Petition for and order allowing appeal.....	176	114
Amended assignments of error.....	180	116
Citation and service..... (omitted in printing) ..	186	120
Libelant's Exhibit No. 2—Deck log.....	187	120
No. 3—Rough log.....	200	121
No. 6—Insurance policy on ship.....	256	121
No. 7—Insurance policy on freight.....	262	125
No. 8—Letters, schedules, and testi- mony re proofs of loss.....	268	128
No. 9—Bill of sale.....	325	164
No. 10—Certificate of secretary of com- merce and navigation.....	332	160
No. 11—Certificate of collector of port of New York.....	334	170
No. 12—Certificate of registry.....	335	170
No. 13—Items of claim.....	340	173
No. 14—Amount paid the British govern- ment .....	340	173
Government's Exhibit R—Deposition of Thomas E. Clinch..	341	174
Exhibits in Evidence—Maps of Orkney Islands.....	345a	176
Exhibit in Evidence—Chart of North Sea.....	345c	176
Proceedings in the United States circuit court of appeals for the third circuit.....	346	177
Order assigning judge.....	346	177
Submission of cause.....	347	177
Opinion, Buffington, J.....	348	178
Dissenting opinion, Davis, J.....	354	183
Judgment .....	358	186
Clerk's certificate.....	359	187
Writ of certiorari and return.....	360	187



[fol. 1]     **IN UNITED STATES DISTRICT COURT,  
DISTRICT OF NEW JERSEY**

In Admiralty

STANDARD OIL COMPANY, Libelant,

vs.

THE UNITED STATES OF AMERICA

DOCKET ENTRIES

1919.

- May 5. Libel for Contract. \$163,704.53.
- " 5. Stipulation for Costs.
- " 5. Citation issued, returnable May 27th, 1919.
- " 7. Citation returned served Charles F. Lynch.
- " 23. Appearance—Charles F. Lynch, U. S. Attorney.
- " 26. Stipulation for extension of time to file answer.
- " 28. Affidavit of Service.
- " 23. Answers. Charles F. Lynch, U. S. Attorney.

1920.

- Mar. 12. Order of Substitution.

1921.

- Feb. 3. Trial.
- Swg. 1 witness.
- July 30. Memorandum.
- " 30. Libelant's depositions (1 Book).
- " 30. Respondent's depositions (1 Book).
- " 30. Libelant's exhibit's (3 Log Books and 1 folder).
- Aug. 25. Bill of Costs.
- Sept. 23. Final Decree.
- " 23. Costs taxed.
- " 23. Docket fee.
- " 23. Enrolling.

[fol. 2]

1922.

- Jan. 5. Notice of Motion for Order amending decree, acknowledged.
- " 16. Order opening final decree.
- Feb. 23. Notice of Appeal.
- " 23. Petition and Order allowing Appeal.
- " 23. Assignments of Error.
- Apr. 20. Amended Assignments of Error.

A true copy.

George T. Cranmer, Clerk (Seal.)

[Title omitted]

LIBEL—Filed May 5, 1919

First. At all the times hereinafter mentioned the libelant Standard Oil Company was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, having an office and place of business in the City of Bayonne, in the State of New Jersey, and was and still is a resident of the District of New Jersey.

Second. At the time herein mentioned the libelant was the owner of the American steamship Llama, which vessel was registered from the port of New York. The said vessel was built in the year 1890 at Newcastle-on-Tyne, England, of steel.

She was a steamship having two decks, three masts, a plain head and an elliptic stern. Her register length was 318.5 feet, her register breadth was 42 feet, her register depth was 29.5 feet. Her gross tonnage was 3,189 and her net tonnage was 2,011.

Third. On or about the 8th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, pursuant to the Act of Congress of September 2, 1914, entitled "An Act to authorize the establishment of a Bureau of War [fol. 4] Risk Insurance in the Treasury Department," and for a valuable consideration, to wit, a premium then and there fixed and agreed upon, duly made, issued and delivered its certificate of insurance whereby it insured for the libelant Standard Oil Company the steamship Llama, her hull, machinery, boilers, equipment, stores, etc., for one hundred and fifteen thousand dollars (\$115,000), the agreed value of the steamer Llama, at and from New York to Copenhagen and return to the United States, with privilege of coaling in Scandanavia and with privilege of a port or ports of call for admiralty instructions, against loss or damage by the risks of war and against other perils in said certificate of insurance mentioned. By the terms of the said certificate it was agreed that in case of loss payment would be made in funds current in the United States to the Standard Oil Company or its order.

The certificate provided that the respondent does make insurance and cause the libelant to be insured in and during the voyage aforesaid, and further provided as follows:

"Touching the adventures and perils which the insurer is contended to bear, and does take upon itself, they are of men-of-war, letters of marque and counter-marque, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war."

A copy of said certificate is hereto annexed, marked "Exhibit A" and made a part of this libel.

Fourth. At the time the certificate was issued and at all the times mentioned herein the steamship Llama was an American steamship entirely and solely owned by the libelant Standard Oil Company and registered from the port of New York.

[fol. 5] Fifth. The libelant in due course paid the respondent through the Bureau of War Risk Insurance the agreed premium for the insurance aforesaid, which said premium was duly accepted by the respondent.

Sixth. Thereafter and on or about the 14th day of October, 1915, the steamship Llama, being then tight, staunch, strong and in all respects seaworthy and properly and fully manned, equipped and supplied, sailed from New York for the port of Copenhagen, Denmark, with a cargo of gas oil, mineral colza oil, and dry glue, on the voyage described in the certificate of insurance aforesaid.

Seventh. Thereafter and on or about the 29th day of October, 1915, and when the said steamer Llama, in the due prosecution of her said voyage, had arrived at a point about 400 miles westward of the Orkney Islands, she was stopped, taken at sea, seized and detained by a British man-of-war, the same being an armed vessel of the British Navy.

The commander of the said British man-of-war put one of the officers of the said man-of-war with a prize crew on board the Llama and took entire charge of the steamer and her cargo and ordered the Llama to proceed to Kirkwall. Thereafter the Llama, although operated by her officers and crew, was in charge of the British naval officer, who selected the course on which she should proceed and took entire charge of the vessel and her navigation.

The Llama was forced to proceed, although the usual aids to navigation had been discontinued on account of the state of war existing between Great Britain and the German Empire, and the prevalence of German submarines in the waters in which the Llama was then navigating.

Shortly after the naval officer took charge of the Llama she was turned aside under his orders from the course which she had been [fol. 6] following and which she would normally have followed, and was steered on a course laid down by the naval officer for Noup Head to enter Westray Firth.

On the morning of October 31st the naval officer started the vessel into Westray Firth on a course selected by him, and while proceeding on the course thus selected by the naval officer aforesaid, the steamship Llama, while wholly under the command, orders and direction of the said naval officer and with the naval officer on the bridge and in charge of her and whilst she was proceeding at her full speed of 8 knots, at about 9:07 on the morning of October 31, 1915, struck a reef.

The Llama remained fast on the rocks, although prompt and

efficient efforts were made to float her with the vessel's engines and pumping out oil by the assistance of two torpedo boats. These efforts were continued for two days without success. In spite of said efforts to save her, it became necessary to abandon the Llama, and on or about November 2, 1915, she was abandoned.

The Llama subsequently slipped off the rocks and sank with all her cargo, becoming a total loss. Her freight and all her cargo were totally lost with her.

Eighth. The stranding and loss of the steamship Llama as aforesaid and the loss of her cargo and freight was wholly due to the seizure, restraint and detention of the steamer, as hereinbefore set forth, and her forcible diversion from the usual and customary course which she would otherwise have followed to her destination.

The said capture, seizure, restraint and diversion of the Llama were warlike acts done by the British Government as a belligerent and in prosecution of hostilities between the United Kingdom of Great Britain and Ireland and certain other sovereign states, including the German Empire and the Empire of Austria-Hungary, [fol. 7] and her loss as aforesaid was also a consequence of hostilities and warlike operations within the meaning of the insurance.

At the time the vessel was seized neither the port of Kirkwall nor the part of Copenhagen was a blockaded port and the Llama was not attempting to evade any blockade. The loss of the steamship Llama was therefore due to causes falling within the perils and risks insured by and under the policy and certificate of insurance issued by the Treasury Department of the United States above mentioned, in which said steamship was valued at and insured up to the sum of one hundred and fifteen thousand dollars (\$115,000).

Ninth. The libellant incurred certain expenses in working and laboring in an attempt to save the steamship Llama, her cargo and freight, after said stranding. The nature and amount of these expenses are as follows:

Allowance to the steamship Wico for going to the assistance of the steamship Llama.....	\$2,872.98
Cable expenses incurred in connection with the sinking of the steamship Llama.....	209.75
Wages and maintenance of the members of the crew who remained by the steamship Llama from the time of her stranding until the time of her sinking.....	271.88
Bill rendered by and paid to the British Admiralty for services in connection with the stranding, £73:13:4 at 4.75.....	349.92
	<hr/>
	\$3,704.53

Tenth. After the sinking of the Llama, and the loss of said vessel, her cargo and freight, and before the commencement of this action, libellant gave to the respondent due notice and proof of the loss as aforesaid, and surrendered to the respondent the said certificate and

demand of the respondent the sum of \$115,000 and \$3,704.53, to [fol. 8] which the libelant had become and was entitled by reason of the premises under and pursuant to the terms of the said certificate. Libelant duly performed all the conditions of the said certificate of insurance on its part, but the respondent has refused to accept the proof of loss and neglected and refused to pay the said sums or any part thereof, and the said sums of \$115,000 and \$3,704.53, aggregating \$118,704.53, still remain unpaid and are now due and owing with interest to the libelant from the respondent.

For a second cause of action, the libelant repeats and re-alleges the allegations contained and the matters alleged in articles first and second of this libel, and further alleges as follows:

Eleventh. On or about the 16th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, pursuant to the Act of Congress of September 2, 1914, entitled "An Act to Authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department," and for a valuable consideration, to wit, a premium then and there fixed and agreed upon, duly made, issued and delivered its certificate of insurance whereby it insured for the libelant Standard Oil Company the sum of forty-five thousand dollars (\$45,000) upon the freight and advances of the steamship Llama at and from New York to Copenhagen, with privilege of coaling at Scandinavia and with privilege of port or ports of call for admiralty instructions, against loss or damage by the risks of war and against other perils in said certificate of insurance mentioned. By the terms of said certificate it was agreed that in case of loss payment would be made in funds current in the United States to the Standard Oil Company or its order.

The certificate provided that the respondent does make insurance and caused the libelant to be insured in and during the voyage [fol. 9] aforesaid and further provided as follows:

"Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are men-of-war, letters of marque, and counter-marque, surprisals, takings at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war."

A copy of said certificate is hereto annexed, marked "Exhibit B" and made a part of this libel.

Twelfth. At the time said certificate was issued and at all the times mentioned herein the steamship Llama was an American steamship entirely and solely owned by the libelant Standard Oil Company and registered from the port of New York.

Thirteenth. The libelant in due course paid the respondent through the Bureau of War Risk Insurance the agreed premium for

the insurance aforesaid, which said premium was duly accepted by the respondent.

Fourteenth. Thereafter and on or about the 14th day of October, 1915, the steamship Llama, being then tight, staunch, strong and in all respects seaworthy and properly and fully manned, equipped and supplied, sailed from New York for the port of Copenhagen, Denmark, with a cargo of gas oil, mineral colza oil, and dry glue, on the voyage described in said certificate of insurance. The freight of said cargo was insured by the respondent as aforesaid.

Fifteenth. Thereafter and on or about the 29th day of October, 1915, and when the said steamship Llama, in the due prosecution of her said voyage, had arrived at a point about 400 miles westward [fol. 10] of the Orkney Islands, she was stopped, taken at sea, seized and detained by a British man-of-war, the same being an armed vessel of the British Navy.

The commander of the said British man-of-war put one of the officers of the said man-of-war with a prize crew on board the Llama and took entire charge of the steamer and her cargo and ordered the Llama to proceed to Kirkwall. Thereafter the Llama, although operated by her officers and crew, was in charge of the British naval officer, who selected the course on which she should proceed and took entire charge of the vessel and her navigation.

The Llama was forced to proceed, although the usual aids to navigation had been discontinued on account of the state of war existing between Great Britain and the German Empire, and the prevalence of German submarines in the waters in which the Llama was then navigating.

Shortly after the naval officer took charge of the Llama she was turned aside under his orders from the course which she had been following, and which she would normally have followed, and was steered on a course laid down by the naval officer for Noup Head to enter Westray Firth.

On the morning of October 31st the naval officer started the vessel into Westray Firth on a course selected by him, and while proceeding on the course thus selected by the naval officer aforesaid, the steamship Llama, while wholly under the command, orders and direction of the said naval officer and with the naval officer on the bridge and in charge of her and whilst she was proceeding at her full speed of 8 knots, at about 9:07 on the morning of October 31, 1915, struck a reef.

The Llama remained fast on the rocks, although prompt and efficient efforts were made to float her with the vessel's engines and [fol. 11] pumping out oil by the assistance of two torpedo boats. These efforts were continued for two days without success. In spite of said efforts to save her, it became necessary to abandon the Llama, and on or about November 2, 1915, she was abandoned.

The Llama subsequently slipped off the rocks and sank with all her cargo, becoming a total loss. Her freight and advances and all her cargo were totally lost with her, and said cargo, the freight

whereof was insured as aforesaid, was totally lost by the perils in said certificate of insurance mentioned.

Sixteenth. The stranding and loss of the steamship Llama as aforesaid and the loss of her cargo, freight and advances, was wholly due to the seizure, restraint and detention of the steamer, as hereinbefore set forth, and her forcible diversion from the usual and customary course which she would otherwise have followed to her destination.

The said capture, seizure, restraint and diversion of the Llama were warlike acts done by the British Government as a belligerent and in prosecution of hostilities between the United Kingdom of Great Britain and Ireland and certain other sovereign states, including the German Empire and the Empire of Austria-Hungary, and the loss of the freight as aforesaid was also a consequence of hostilities and warlike operations within the meaning of the insurance.

At the time the vessel was seized neither the port of Kirkwall nor the port of Copenhagen was a blockaded port and the Llama was not attempting to evade any blockade. The loss of the cargo, freight and advances of the steamship Llama was therefore due to causes falling within the perils and risks insured by and under the policy and certificate of insurance issued by the Treasury Department of the United States above mentioned, in which the freight and advances of said vessel were valued at and insured up to the sum of forty-five thousand dollars (\$45,000).

[fol. 12] The libelant would have received as its own property the freight to be paid for the transportation of said cargo, but has been deprived thereof by reason of the loss of said ship and her cargo as aforesaid.

Seventeenth. After the sinking of the Llama and the loss of the said vessel, her cargo, freight and advances, and before the commencement of this action, libelant gave to the respondent due notice and proof of the loss as aforesaid, and surrendered to the respondent the said certificate and demanded of the respondent the sum of \$45,000, to which the libelant had become and was entitled by reason of the premises under and pursuant to the terms of the said certificate. Libelant duly performed all the conditions of said certificate of insurance on its part, but the respondent has refused to accept the proof of loss and neglected and refused to pay the said sum or any part thereof, and the said sum of forty-five thousand dollars (\$45,000) is now due and owing with interest to the libelant from the respondent.

Eighteenth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your libelant prays that process issue against the respondent according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction, and in accordance with the provisions of the Act of Congress of September



2, 1914, aforesaid, citing it to appear and answer all and singular the matters aforesaid, and that the respondent may be condemned to pay the amount of libelant's said damages in the sum of one hundred sixty-three thousand seven hundred and four 53/100 dollars (\$163,704.53) with interest and costs, and that the libelant may have a decree therefor against the United States of America, and that the [fol. 13] libelant may have such other and further relief as in law and justice it may be entitled to receive.

John M. Woolsey, Proctor for Libelant. Office and P. O. Address, 27 William St., Borough of Manhattan, City of New York. Charles L. Cowenhoven, Resident Proctor for Libelant. Office and P. O. Address, 46 Paterson St., New Brunswick, New Jersey.

Jurat showing the foregoing was duly sworn to by F. D. Asche omitted in printing.

[fol. 14]

EXHIBIT A TO LIBEL

No. 2.

Original

No. 1263.

Voyage

The United States of America,  
Treasury Department,  
Bureau of War Risk Insurance,  
Washington, D. C.,

Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in funds current in the United States, to them or order), does make insurance and cause them to be insured at and from New York to Copenhagen and return to the United States, with privilege of coaling in Scandinavia and with privilege of a port or ports of call for Admiralty instructions—

Sum insured, \$115,000

One hundred fifteen thousand dollars upon the Hull, Machinery, Boilers, Equipment, Stores and everything connected therewith of and in good Vessel called the "Llama" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure on the said vessel, etc., as above, and shall so continue and endure until the said vessel, etc., shall be arrived at as above and until she has moored and anchored twenty-four hours in good safety. The said vessel, etc., for so much as concerns the insured, by agreement between the insured and insurers in this Policy, are and shall be valued at \$115,000.



[fol. 15] Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are of men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detainments of all kinds, princes, and peoples, of what nation, condition, or quality soever, and all consequence of hostilities or warlike operations, whether before or after declarations of war.

Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

In the case of an iron or steel vessel, average payable without deduction of new for old.

And in case of any loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said vessel, etc., or any part thereof without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the

Premium, \$3,450. consideration for this insurance by the insured or their assigns, at and after the rate of 3 per cent.

It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

[fol. 16] It is understood and agreed that the vessel insured hereunder shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted by the insured not to sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this policy may, by endorsement made hereupon, cover to such special port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent.

Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until countersigned by William C. DeLanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

[fol. 17] Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of belligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of belligerents, or one or more persons who, in the course of the voyage, directly assists the operations of belligerents; or if she carries supplies to war vessels of belligerent nations.

Countersigned at Washington D. C., this 8th day of October, 1915.  
(Sgd.) J. Brooks B. Parker, Assistant Director.

Warranted free from claim consequent upon or arising from the ultimate destination of the cargo being the country of a belligerent.  
[fol. 18] (Endorsement:) United States of America, Treasury Department, Bureau of War Risk Insurance. Voyage. Standard Oil Company (New Jersey). "Llama." Sum insured, \$115,000; rate, 3%; Premium, \$3,450. Johnson & Higgins, New York City. Effected by Johnson & Higgins. 49 & 51 Wall St., N. Y. Entered 57202 Examined: — — —.

[fol. 19]

EXHIBIT B TO LIBEL

No. 4.

Original  
Freight

No. 1269.

The United States of America,  
Treasury Department,  
Bureau of War Risk Insurance,  
Washington, D. C.

Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in funds current in the United States, to them or order), does make insurance and cause them to be insured at and from New York to

Copenhagen with privilege of coaling in Scandinavia port or ports of call for Admiralty instructions—

Sum insured, \$45,000

forty-five thousand dollars upon the Freight and Advances, if any, of the Vessel called the "Llama" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure upon the said freight, etc., as above and shall so continue and endure until the said vessel shall be arrived at as above, and until she has anchored twenty-four hours in good safety.

Touching the adventures and perils which the insurer is contended to bear, and does take upon itself, they are men-of-war, letters of marque and countermarque, surprisals, taking at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition or quality soever, and all consequences of hostilities or war-like operations, whether before or after declaration of war. [fol. 20] Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

And in case of any loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard, and recovery of the said freight and advances, or any part thereof, without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been

Paid the consideration for this insurance, by Premium, \$787.50. the insured or their assigns, at and after the rate of 1¼ per cent.

Warranted by the insured free from claim consequent upon the loss of time whether arising from a peril insured against or not.

It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

It is understood and agreed that the vessel, the freight and advances of which are insured hereunder shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted that the vessel, the freight and advances of which are [fol. 21] insured hereunder, shall not sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this

policy may, by endorsement made hereupon, cover to such special port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent. Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until counter-signed by William C. De Lanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of belligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detach-[fol. 22] ment of belligerents, or one or more persons who, in the course of the voyage, directly assist in the operations of belligerents; or if she carries supplies to war vessels of belligerent nations.

Countersigned at Washington, D. C., this 16th day of October, 1915.

(Sgd.) William De Lanoy, Director.

Warranted that the goods are destined for the country of the port to which they are insured, and free of claim consequent upon or arising from their ultimate destination being the country of a belligerent.

[fol. 23] (Endorsed:) United States of America, Treasury Department, Bureau of War Risk Insurance. Freight. Standard Oil Company (New Jersey). "Llama." Sum Insured, \$45,000; rate, 1¾%; premium, \$787.50. Johnson & Higgins, New York City. Effected by Johnson & Higgins, 59 and 51 Wall St., N. Y. Entered 57202. Examined: ——. Filed May 5th, 1919, at 2:30 o'clock P. M. George T. Cranmer, Clerk.

[fols. 24-26] COST BOND FOR \$250—Approved and filed May 5, 1919;  
omitted in printing

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[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE EXTENSION OF TIME—Filed May 26, 1919

It is hereby stipulated and agreed that the United States of America shall have thirty days' additional time in which to answer the above-stated cause of action.

John M. Woolsey, Proctor for Libellant. Charles F. Lynch,  
United States Attorney, District of New Jersey, Proctor for  
the United States of America, by Joseph L. Bodine, As-  
sistant United States Attorney.

Dated May 24th, 1919.

[File endorsement omitted.]

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[fol. 28] IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 23, 1919

To the Honorable the Judges of the District Court of the United States for the District of New Jersey, sitting in Admiralty:

The answer of the government of the United States of America to the libel and complaint of the Standard Oil Company, against the United States of America, in a cause of contract, civil and maritime, alleges:

First. It believes the facts stated in the first paragraph of the libel to be true.

Second. It believes the facts stated in the second paragraph of the libel to be true.

Third. It admits that on or about the 8th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, for a premium agreed upon, issued a certificate of insurance, a copy of which purports to be annexed to the libel. It demands that said original certificate of insurance be produced at the trial, and for certainty, it begs leave to refer to the said original certificate as stating the terms of such insurance contract.

Fourth. It denies knowledge of the facts stated in the fourth paragraph of the libel, and asks strict proof thereof, if material.

Fifth. It believes the facts stated in the fifth paragraph of the libel are true.

Sixth. It denies knowledge of the facts stated in the sixth paragraph of the libel, and if the same be material, strict proof thereof is demanded.

Seventh. It denies knowledge or information sufficient to form a belief as to each and every allegation stated in the seventh paragraph of the libel, and the said facts are denied, same as herein admitted, [fol. 29] and if material, strict proof thereof is demanded.

It is informed that the Steamship Llama, on or about October 31, 1915, while proceeding through the Westray Firth, navigated by her officers and crew, struck an uncharted rock, and became a loss, but it alleged that the loss of the said steamship and her cargo was not a loss within the meaning of said policy and certificate of insurance.

Eighth. It denies that the loss of the Steamship Llama was due to causes falling within the perils and risks insured by and under said policy or certificate of insurance. It denies that her loss was due to seizure, restraint or detention by the British government, or to the forcible diversion of the vessel from her course, or that the loss was due to warlike acts done by the British government, or was in consequence of hostilities and warlike operation within the meaning of the insurance.

Ninth. It has no certain knowledge of the expenses incurred by the libellant in working and laboring in an attempt to save the said steamship and her cargo and freight after said stranding, and if such expenses are proper items of loss, it demands that the nature and amount thereof be determined by proper proofs. However, it denies that the amount of such expenses are recoverable under the provisions of said policy or certificate of insurance.

Tenth. It denies that the libellant is entitled to recover any moneys under said policy or certificate of insurance.

And further answering the second cause of action stated in said libel, it is alleged:

Eleventh. It admits that on or about the 16th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, for the premium agreed upon, issued a certificate of insurance, copy of which is purported to be annexed to the libel. It demands that said original certificate of insurance be produced at the trial, and for certainty, it begs leave to refer to said original certificate as stating the terms of such insurance contract.

Twelfth. It denies knowledge of the facts stated in the twelfth paragraph of the libel, and if material, demands strict proof thereof.

Thirteenth. It believes that the facts stated in the thirteenth paragraph of the libel are true.

Fourteenth. It denies knowledge of the facts stated in the fourteenth paragraph of the libel, and if material, demands strict proof thereof.

Fifteenth. It denies knowledge or information sufficient to form a belief as to each and every allegation stated in the fifteenth paragraph of the libel, and they are denied, save as herein admitted, and strict proofs thereof demanded, if material.

It is informed that the Llama on or about October 31, 1915, while proceeding through the Westray Firth, under the navigation of her officers and crew, struck an uncharted rock and became a loss. It alleges, however, that the loss of the Llama, her cargo, freight and advances, was not a loss within the meaning of said policy and certificate of insurance.

Sixteenth. It denies that the loss of the Steamship Llama, her cargo, freight and advances, was a loss within the meaning of said policy or certificate of insurance. It denies that said loss was due to seizure, restraint or detention of the steamer, or her forcible diversion from her course, or that her loss was due to warlike acts done by the British government, or was the consequence of hostilities and warlike operations within the meaning of the insurance.

It demands, if material, proof to be made that the libelant would [fol. 31] have received as its own property the freight to be paid for the transportation of said cargo, and that it has been deprived thereof by reason of said loss.

Seventeenth. It denies that the libelant is entitled to recover any money under the terms of said policy and certificate of insurance.

Eighteenth. It admits the admiralty and maritime jurisdiction of this honorable court, but it denies that the premises stated in the libel are true.

Wherefore, it prays that the libel may be dismissed with costs.

United States of America, by Charles F. Lynch, United States Attorney for the District of New Jersey, by Joseph L. Bodine, Asst. U. S. Atty.

[File endorsement omitted.]

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF SUBSTITUTION—Filed March 12, 1920

On the underwritten consent and on motion of Kirlin, Woolsey, Campbell, Hickox & Keating, it is hereby



Ordered that Kirlin, Woolsey, Campbell, Hickox & Keating be substituted for Kirlin, Woolsey & Hickox as proctors for the libellant herein.

J. Warren Davis, U. S. D. J.

[File endorsement omitted.]

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

Deposition Taken on Behalf of Libellant at the Office of Messrs. Kirlin, Woolsey & Hickox, 27 William Street, New York, December 1, 1919

Appearances: Messrs. Kirlin, Woolsey & Hickox (Mr. McGrann) for libellant; Hon. Joseph L. Bodine, United States Attorney for the District of New Jersey (by Robert Phillips, Esq., Assistant U. S. Attorney), for respondent.

It is stipulated and agreed that the testimony may be taken by a stenographer, signing, filing and certification to be waived, stenographer's fees to be taxable.

CHRISTIAN P. JENSEN, being duly sworn and examined as a witness for libellant, testifies as follows:

By Mr. McGrann:

Q. What is your occupation?

A. Mariner.

Q. What license do you hold?

A. I now hold a master's unlimited and pilot for New York bay and harbor and the Mississippi River.

Q. How long have you been going to sea?

A. Since 1906.

[fol. 34] Q. On the occasion of the stranding and loss of the steamship Llama on the 31st of October, 1915, were you serving on board that vessel?

A. I was serving aboard as third officer.

Q. How long had you been on her at the time of this stranding?

A. I had been on her about eighteen days.

Q. You joined her at New York?

A. I joined her at New York while she was undergoing repairs.

Q. Who was in command at that time?

A. Captain Clinch.

Q. Who was the chief officer?

A. Mr. Ricca.

Q. What was this Llama, what kind of a vessel was it?

A. She was an oil tanker. Had flown the German flag until the



outbreak of the war, when she was transferred to the American flag. She was owned by the Standard Oil Company of New Jersey.

Q. Was she a regular tank ship?

A. She was a regular tank carrier.

Q. On this particular voyage during September and October where was she bound?

A. She was bound for Copenhagen with oil in bulk.

Q. Did she have a full cargo?

A. She had a full cargo.

Q. What can you say of her condition generally?

A. She was in good seaworthy condition.

Q. Did she have a full crew?

A. She had a full crew.

Q. Do you recall when you left New York?

A. I don't recall the exact date.

Q. Will you refer to the log book which I will have marked for identification (handing witness book)?

A. We left New York on October 14 at 12:05 A. M. from an anchorage off Tompkinsville.

Q. Did anything unusual occur on the voyage across until you got to the vicinity of the Orkneys?

A. Nothing unusual occurred until we got in the vicinity of the Orkneys when we were boarded by a British naval officer and prize crew on October 29.

[fol. 35] Q. About what time on October 29 was it that this officer boarded?

A. It was about 7:30.

Q. In the morning?

A. In the morning; I was just coming on watch as the boat had pulled off.

Q. That is the boat on which the prize crew came on board?

A. Yes, sir.

Q. Was your vessel laid to for this purpose?

A. We stopped for this purpose in obedience to a signal from the British auxiliary cruiser.

Q. Did you see that cruiser?

A. I saw it; it was a converted merchant ship.

Q. Do you remember the name of her?

A. If I recall right it was the former Allen liner plying between New York and British ports.

Q. Did she fly the man-of-war flag of the British navy, do you know?

A. That I can't say.

Q. Do you know what occurred when this naval officer boarded the Llama as to what action he took, I mean personally?

A. He located himself in the cabin, stationed men on the bridge, that is, British enlisted men which formed part of the prize crew, and he habitually visited the bridge at his own discretion. From the time the prize crew boarded the ship until they all left one man was constantly on the bridge.

Q. Was that man armed?

A. No, sir; not to my knowledge, but he was always provided with an excellent pair of marine glasses.

Q. That is the man who was always on the bridge?

A. On the bridge, yes.

Q. That is, the crew relieved each other at that station, did they?

A. On the bridge, yes, sir. However, they had rifles as part of their equipment when they boarded the ship.

Q. Can you state where the vessel was at that time? If not, refer to the log and see if you can refresh your recollection?

A. She was in an approximate position of fifty-six degrees and [fol. 36] some minutes N. and longitude ten degrees and some minutes W. For the exact minutes I consider it advisable to consult the log.

Q. Refer to the log and see if they have it entered exactly?

A. (Looking at log.) It is here on 58.56 N. and 11.50 W. longitude.

Q. Had you ever been on the Llama on a previous eastward voyage?

A. No, sir; this was my first voyage on the Llama.

Q. Are you able to say whether or not she had ever gone through Westray Firth from any knowledge you have of the records of the vessel?

Mr. Phillips: Objected to for the reason that the witness has stated that this was his first voyage on the Llama.

A. To my knowledge she had not been through Westray Firth before, although she had been in Kirkwall on a previous voyage. This information I had from the chief and second officer who had made previous voyages to all the ports on this vessel.

Mr. Phillips: I move that the witness' answer be stricken from the record, as it is hearsay and not of his own knowledge.

Q. What occurred during the time from October 29 when you were boarded by the prize crew up to the morning of the stranding generally, what did you do, what did the vessel do?

A. We proceeded on a course that would take us in the vicinity of Orkney Islands evidently with the intention of going in there. On the night before stranding we arrived in the vicinity of Newhead, but in view of night coming on we hove to until the next morning.

Q. That would be the morning of the 31st?

A. That would be the morning of the 31st.

Q. What watch did you have on the morning of the 31st, if any? [fol. 37] A. I had the watch from 8 A. M. to 12 noon. I relieved the chief officer at 8 A. M. on the morning of the 31st of October.

Q. That is Mr. Ricca?

A. That's Mr. Ricca.

Q. Can you state where the vessel was at about 8 o'clock when you relieved him, what she was doing, what course she was on?

A. When I relieved him we were on a course of S. half W. with Newhead in sight on our port hand.

Q. Is that course you have stated the magnetic course or compass course?

A. That is the course by the Standard compass.

Q. Can you state what error, if any, there was on that course in deviation?

A. From observations that I had taken on our way across the error was almost negligible, I mean the deviation.

Q. Who was on the bridge at the time you went on watch?

A. The prize officer and the captain of the ship.

Q. Did you have a wheelsman at the wheel?

A. We had a man at the wheel and the usual lookout.

Q. That is the ship's lookout?

A. No; the usual lookout man *of* one of the members of the prize crew.

Q. He was on the bridge, was he?

A. He was on the bridge.

Q. Is that an open bridge?

A. It was an open bridge which is usually found in that class of vessels, that is extending from one side of the ship to the other and affording means of visibility all around the horizon.

Q. Where was the chart house located with respect to the bridge?

A. The chart house was situated on the same deck immediately abaft the bridge.

Q. Was the wheelsman inside of the chart house or outside?

A. The wheelsman was outside directly in front of the chart house.

Q. Where was your Standard compass?

A. The Standard compass was located on top of the chart house.

Q. Was there also a compass on the bridge?

A. Also a compass on the bridge directly in front of the wheelsman.

[fol. 38] Q. How was the weather on this morning?

A. The weather was clear, sky was overcast.

Q. Any wind?

A. There was a moderate breeze blowing, but I don't recall from what direction.

Q. How was the sea?

A. The sea was smooth. There was a moderate swell running.

Q. Did you continue on this course S. half W. which you stated was the course when you went on watch?

A. We continued on that course right along until after the prize officer and the captain returned from breakfast.

Q. What occurred then?

A. After they returned from breakfast and after they had, I presume, consulted the chart and other matters relating to this particular navigation, the course was changed to S. E.

Q. State the circumstances under which that course was altered to S. E., as far as you personally were concerned and saw it?

A. The captain and the prize officer were standing on the star-board side of the bridge, the exact conversation I do not know, but the captain acknowledged what I presume to be some order from the prize officer, because immediately thereafter he ordered me to steer S. E. by the Standard compass. I proceeded to the top of the chart room to execute this order.

Mr. Phillips: I object to the statement of the witness and move that it be stricken out, as the witness states a conclusion.

A. (continued). While the ship was being steadied on this course the prize officer pointed out to the man at the wheel a headland which he should steer for. When the ship came on a course of S. E. by Standard compass this course coincided with the information that the prize officer had given the wheelsman concerning the course the ship was to be steadied on.

Q. Did you ever hear the conversation that took place between the wheelsman and the prize officer, or the words of the prize officer [fol. 39] when he went to the wheelsman as you have described and indicated to him a headland?

A. I do not recall the exact words he said at that time, but I saw him pointing his finger ahead or nearly ahead and it was evident to me that the wheelsman was being given directions concerning the course from the prize officer.

Mr. Phillips: Objected to and I move that the last statement of the witness be stricken out, as he is stating conclusions.

Q. I show you the United States Hydrographic Chart No. 4464, published April, 1915, this being a chart of the Orkney Islands, and ask you if you can indicate in pencil on this chart the headland which was pointed out by the prize officer as you have testified?

A. The headland was here (indicating), on the chart it shows that it is called Fersness.

Q. Is there a highland in the vicinity of the headland?

A. Yes, sir; there is to the right of it proceeding on the course we were on.

Q. Indicate the headland by a circle all around it and the highland similarly.

Witness does as requested.

A. That is the headland, the circle below that is the highland (indicating).

Q. Just put your initials on the circles which you have designated.

Witness does as requested, marking the circles C. J.

Q. Did you continue on that course heading for the headland on which the wheelsman was directed to steer?

A. We continued this course for some time, but it was later changed to the right, it was about 8:53 when I received orders to

change the course to S. by E. three-quarters E. by Standard compass. I went on top and gave the usual orders to the helmsman, [fol. 40] stating the course on this S. by E. three-quarters E. course.

Q. Was the prize officer present at this time?

A. The prize officer was present on the bridge.

Q. How did you receive the word to change the course?

A. I always received my orders from the captain, because of the fact that he was the proper channel for me to receive orders from.

Q. And did he in fact tell you this course himself?

A. He told me this course himself.

Q. Did the prize officer know that this course was being made?

Mr. Phillips: Objected to for the reason that the witness can't be expected to know what went on in the prize officer's mind.

Q. Testify what the circumstances was as you saw it?

A. Previous to any change of course the prize officer always had a consultation with the captain and the captain seemed to acknowledge something from the prize officer immediately before I received orders to change the course.

Mr. Phillips: Objected to and I move that it be stricken out for the reason that the witness is stating what he has no knowledge of.

Q. I understand you are describing now what you saw on these occasions, are you?

A. I am describing what I saw on these occasions; yes, sir.

Q. Did this same consultation occur previous to this last change of course as to which you have testified?

A. Yes, sir; it did.

Q. Did you state about what time this occurrence took place on the change of course to the headland which you have marked on the Exhibit No. 1?

A. About 8:40 A. M.

Q. What time was it, if you recall, that this last change of course was made?

A. The last change of course to S. by E. three-quarters E. was at 8:53.

[fol. 41] Q. Did you continue on that course?

A. We continued on that course until we struck.

Q. Did you remain on the bridge constantly during that interval?

A. I remained on the bridge constantly during that interval because it was my watch.

Q. Was the prize officer on the bridge?

A. The prize officer was on the bridge constantly except during the time he went to his breakfast and at intervals when he went into the chart room.

Q. Was the prize officer on the bridge from 8:53 to the time you struck?

A. He did not leave the bridge by way of any of the two ladders situated on each side of the bridge. He might have been in the chart room, but this is also considered part of the bridge inasmuch

as all chart navigation was performed in this chart room and there was no way to leave the bridge through the chart room.

Q. What time did you strike?

A. 9:10 A. M.

Q. I notice it is entered in the log about 9:07, is it not?

A. Yes, sir; there is a discrepancy of three minutes, but I am positive of 9:10 because I looked at my watch and I kept a notebook with me all the time wherein I entered all times of importance and other matters which should be kept for further reference.

Q. Did you preserve this notebook to which you have just referred?

A. I preserved it until about six months ago, when thinking I had no further use for it I destroyed it.

Mr. McGrann: I will say on the record here this is the first knowledge I have of this notebook.

Q. You have got the ship on the course at 8:53 and stranded 9:10. Just describe as minutely as you can what occurred during that interval?

A. After I had steadied on the S. by E. three-quarters E. course, I went on the bridge again from the top of the chart house where the Standard compass was located. I kept a sharp lookout. Between the time of change of course and stranding I saw breakers on the [fol. 42]port bow close aboard. The fact of seeing these breakers naturally aroused my curiosity and also made me entertain a certain amount of doubt if we would clear them or not. I notified the prize officer in person about these breakers that seemed to me to be rather close on the course we were on. I asked him his opinion about being on a safe course to pass these breakers. He assured me we were. Because of the fact that my duty kept me on the bridge all the time I had no access to the chart, and presuming that the prize officer was naturally acquainted with the waters in this locality, I requested him to inform me of the name of this reef. He said he was not sure of the name.

Q. Just continue up to the time you stranded; did anything else occur?

A. I was standing a little to port of midship when I had my conversation with the prize officer. After finishing the conversation and getting no exact information as to the name of this reef, the prize officer went over on the starboard side of the bridge. I remained on the port half of the bridge. The captain who had been in the chart house came out on the bridge and stood near the prize officer. About five minutes after my conversation with the prize officer we struck. The bow rose several feet. We put the engines full speed astern, but remained fast and after I had ordered the lifeboats cleared away I proceeded to the other part of the ship to ascertain the extent of the damage.

Q. What did you find the condition to be?

A. The fore part of the ship was pierced and the water was rushing in very rapidly. I left the other part of the ship and went on the poop deck midship and took soundings.

Q. Do you recall these soundings, are they entered in the log book?

A. The soundings amidship were three fathoms. After taking the soundings and reporting them to the bridge the second officer and I supervised the clearing away of the lifeboats.

[fol. 43] Q. How long did you remain on the ship personally after the stranding?

A. After the stranding I remained to some time in the afternoon, about four o'clock, I think it was, when all left her because she was breaking up and it was considered unsafe to remain aboard any longer.

Q. Had any assistance come to the Llama up to that time?

A. Yes, sir; two British destroyers came about a half hour after we had stranded in response to our radio message.

Q. Did they render you any assistance?

A. They attempted to pull us off, but without success, of course.

Q. Did you return to the vessel later?

A. I returned to the vessel the following day.

Q. That would be November 1?

A. November 1; at that time several vessels were engaged in trying to pull her off. These vessels were British drifters.

Q. What condition generally was the Llama in at the time you returned, had she broken up any or was she in the same condition?

A. Her bulkheads were practically all broken. She had swung somewhat during the night and had a considerable port list.

Q. Did you see the Llama after this occasion of the first of November?

A. No, sir; after that day, I did not see her any more. I returned to the United States some time after that.

Q. Can you state where the stranding occurred, that is, could you locate on this libellant's Exhibit 1?

A. I can.

Q. Please do so.

A. The stranding occurred on what is called Skea Skerries.

Q. You have indicated a circle there; is that the position of the Llama at stranding?

A. The Llama at stranding.

Q. Suppose you put the figure 2 in that circle and your initials.

Witness does as requested.

[fol. 44] Q. Were there breakers directly where the vessel took the strand or were they clear of the vessel?

A. No, sir; the breakers were further in shore.

Q. How far away from where the vessel stranded?

A. About half a mile, I should say.

Q. Did you have occasion while the prize crew was on board the Llama to meet or communicate with any other vessels?

A. We communicated with another vessel about two to three hours after the prize crew had boarded us on October 29. This vessel was a British auxiliary cruiser. He requested certain infor-



mation from us; I hoisted our international signal numbers or our ensign and I also notified the British prize officer and the captain. At that time the British prize officer told me to hoist a certain flag of the international code. If I remember correctly it was the letter "X" he told me to hoist separately. When the other vessel saw the flag that I had hoisted in obedience to orders from the British prize officer this auxiliary cruiser steamed away from us again.

Q. Was there any other interchange of signals that you recall between other vessels and yourself?

A. No, sir; there was no other during my watches.

Q. On this occasion did you receive any orders from the captain of the Llama with respect to signals?

A. As I recall I did not receive any orders.

The deck log is marked libelant's Exhibit 2 for identification.

The rough log is marked libelant's Exhibit 3 for identification.

Q. Who prepared these logbooks that have been marked for identification?

A. The officer on the watch entered all items of interest in the rough log with a pencil. At the expiration of the day the chief officer copies in the smooth log with pen and ink.

[fol. 45] Q. Is that handwriting on Exhibit 2 for identification the chief officer's writing?

A. That is the chief officer's, Mr. Ricca's, writing.

Q. How about the writing for the watch on which the vessel stranded?

A. That is Mr. Fleming's, the second officer's writing; I did not have time to enter anything in the log immediately after the Llama had stranded because I was engaged on what I then considered much more important duties, but in order to be able to write up the log when I had time and access to it I entered everything of interest in a notebook which I always kept with me.

Q. Did the officer who actually made the entry in Exhibit 3 for that watch, 8 to 12 on the morning of October 31, take his entries from your notebook, if you know?

A. No; he did not make the entries directly from my notebook. I gave him such information as I could recollect from memory on our way from the ship to Kirkwall and I requested him to write up the log if he succeeded and I didn't have access to it.

Q. Just take a look over it and state if the entries are correct in so far as you now recall; I mean of that particular watch on which the stranding occurred?

Mr. Phillips: Objected to for the reason that the witness has testified the entries in the log were not made by him for that particular voyage and also I object to the use of that log by the witness to refresh his memory for the same reason.

A. The log is correct as far as it goes with the exception of time of stranding, which is given here as 9:07 when it was actually 9:10. Furthermore, the log is very incomplete for that particular watch,



but this is accounted for because of the fact that I did not make the entry myself.

Q. It has been put on the record here in the form of objection that such parts of your testimony as to which you have refreshed [fol. 46] your mind by reference to the log are objectionable. You have stated these occurrences from your own memory, have you not, except I believe one reference you made to the position you were in when the prize officer came on board?

A. Yes, sir; I have stated those from my own memory except the time of the date we left New York and the exact latitude and longitude in which the prize officer and crew boarded the Llama.

Q. I notice from the logbook, Exhibit 3 for identification, that you have course of 9 S. by E. three-quarters E. on the steering, but in the same column previous to that course you have the word "various" up to 5; does that interval cover the interval as to which you have been testifying about these changes of course of 8:40 and 8:53; in other words, is that covered by the word "varies" here?

A. Yes, sir; various, that is the usual way of entering courses when the changes are often or when in the vicinity of land.

Q. You are going to sea soon, I presume, when an opportunity offers, are you?

A. Well, I don't think I will go to sea until next summer; the ship is under course of reconversion to a passenger ship; the name of the ship is Agamemnon, ex-Kaiser Wilhelm II; she has recently been recommissioned as a transport.

Q. You are continuing your occupation of mariner?

A. I am continuing my occupation as mariner; I am attached to this Agamemnon as chief officer.

Mr. McGrann: I am willing to put the logbooks in evidence if you wish them.

Mr. Phillips: No.

Mr. McGrann: At any rate, I will preserve them for the Court to look at, to use as it pleases.

Counsel for respondent examined the logbook, libellant's Exhibit No. 3 for identification.

[fol. 47] Cross-examination by Mr. Phillips:

Q. Where was the Llama bound on this voyage?

A. She was bound for Copenhagen, Denmark.

Q. Were you to stop at any other port on the way to Copenhagen?

A. To the best of my knowledge we were not to stop at any other port except, of course, after the prize officer boarded us when we were bound to Kirkwall.

Q. At the time the British cruiser overhauled you for what place were you steering?

A. We were steering for a place what is known as the Hole, situated between Orkney Island and Fair Island.

Q. Is that south of Kirkwall?

A. The Hole is to the northward of the Orkney Islands.

Q. Fair Island is to the north?

A. To the north and eastward of Orkney Island.

Q. Had you at any time previous to this voyage visited Kirkwall?

A. No, sir; I had never visited Kirkwall before.

Q. Do you know if it was intended that the Llama should call at Kirkwall for British admiralty instructions on this voyage before she was overhauled by the British cruiser?

A. I don't know that it was intended, but from common knowledge it was known that all vessels bound for the North Sea were being ordered into Kirkwall by the British naval authorities for visit and search.

Q. Do you know of your own knowledge whether or not the Llama was going to Kirkwall first when she left the United States and then to Copenhagen?

A. I do not know that she was going there, but, of course, we were aware that we undoubtedly would be stopped and ordered in there. We had no other reason as far as I know to go to Kirkwall.

Q. Isn't it a fact that the Llama was on a voyage to Copenhagen with orders to call at Kirkwall by arrangement between her owners and the British navy?

A. I do not know of any arrangement that the Llama's owners had made with the British naval authorities.

[fol. 48] Q. So far as you are able to tell me, then, the Llama was bound directly to Copenhagen on this voyage?

A. Yes, sir.

Q. With no intention of making any stop? Anywhere of her own accord, is that right?

A. No intention unless we were ordered to do so by the British authorities.

Q. In your earlier testimony you have referred to these British naval people who came aboard the ship as a prize crew; did they declare her a prize when they came on board?

A. Officially they did not declare her a prize.

Q. Did you see them when they came on board?

A. I did not see them when they came aboard because I was getting my breakfast at the time, but I saw and heard them a few moments after they had boarded us. They were standing talking directly outside of my room.

Q. Who was talking?

A. Members of the British prize crew.

Q. To each other?

A. To each other.

Q. At what time did you come on watch that morning?

A. At 8 o'clock A. M.

Q. Do you always have the forenoon watch on that ship?

A. I always had the 8 A. M. to 12 noon watch and the 8 P. M. to 12 o'clock midnight watch.

Q. You had this same watch every day, the forenoon watch and the first watch?

A. I had those same watches every day, it is the general orders of duty for third officers throughout the merchant marine.

Q. Did you see this British cruiser heave the Llama to?

A. No; I did not see her heave her to.

Q. You have stated that the British officer took charge, how do you know that he took charge; did he give you any orders?

A. No, sir; he did not give me any orders, but the very fact that he was a naval officer boarding a ship having a civilian crew at a time that the government that this officer was under orders from was engaged in war with the Central Powers would seem reasonable to suppose that he was in charge.

[fol. 49] Q. Did he assume direct charge of the navigation of the Llama—you were there, weren't you?

A. I was there and the impression I was under was that he was in charge of the entire ship, this would also include the navigation.

Mr. Phillips: I move to strike out the witness' answer as it is not responsive.

Q. I repeat my question, did the British officer assume direct charge of the navigation of the Llama?

A. Well, I wouldn't have hesitated for one moment to take orders from him, neither would any of the other officers. He did not officially inform us that he was in charge of the vessel.

Q. Did you see the British officer actually direct the navigation of the Llama?

A. I did not see him actually direct navigation.

Q. That is what I want to know. What did the British sailor who stayed on the bridge do while he was on the bridge?

A. He was there as a representative of the British naval officer, what his orders were I, of course, do not know.

Q. You have stated in your previous testimony here this morning that the Llama did not go through Westray Firth before to your knowledge; I think I am correct in that; how do you know she did not go through Westray Firth before of your own knowledge that is?

A. On the two previous voyages she had been in Baltic ports and I had information from the second and chief officer who had been attached to the Llama during these two previous voyages that they entered Kirkwall from the eastward, that is, from the North Sea side. Knowing that it was a difficult way to enter Kirkwall through Westray Firth I decided to obtain all the information possible concerning the navigation through Westray Firth and I consulted the chart with the second officer, Mr. Fleming.

Q. You are not able to say of your own knowledge, something that you actually witnessed, whether or not that ship ever before went [fol. 50] through Westray Firth, are you, this was your first trip on her?

A. This was my first trip, of course, but—

Q. She could have gone in there a dozen times without your having known it, couldn't she?

A. She could have gone in there a dozen times without my knowing, of course, but the second officer and the chief officer had been attached to the vessel on previous voyages and there was no reason

whatsoever why they should have informed me that she had gone any other way than what they told me.

Q. In answer to my question as to your own knowledge, you haven't any knowledge of your own as to just which way she did go into Kirkwall before, have you?

A. I have no other knowledge than the information I got from the second and chief officer.

Q. Than what somebody told you?

A. What somebody told me.

Q. Do you know whether any other officer of the ship had ever been through Westray Firth?

A. That I do not know for certain.

Q. Do you know if the captain had been through there before?

A. I do not know.

Q. Did he ever say anything to you about it?

A. No, he did not.

Q. On the night before the stranding did you have the deck from 8 to 12?

A. Yes, sir, I did.

Q. What was the vessel doing at that time?

A. We were maneuvering under reduced speed during my watch, we were headed directly away to the northward off Orkney Islands. At about 2 A. M. the course was changed directly opposite to the one we had been standing out on.

Q. Just confine yourself to what happened in the watch you had on deck, when you took the deck at 8 o'clock what was she doing then?

A. We were reducing all speed when I came on deck and I did not relieve until the ship's speed was reduced and we were on a course away from the land.

[fol. 51] Q. What was the purpose of doing that, can you tell us?

A. The purpose was to remain in the vicinity of the entrance to Westray Firth, but not wishing to enter before daylight when navigation could be easier performed than during the hours of darkness.

Q. Who didn't wish to enter the strait until daylight?

A. That I do not know.

Q. Who told you about it?

A. No one told me about it but it was evident from the maneuvering we were performing that we were to remain in the vicinity of Westray Firth until the morning, until daylight.

Q. When you relieved the deck at 8 o'clock, didn't you as is usually the case obtain from the officer you relieved certain information as to what the vessel was doing, such information as you the officer in charge for that watch should have at hand?

A. Do you mean at 8 o'clock?

Q. Yes, when you took the deck?

A. I didn't receive any information as to the reason why we were standing away from the land. That of course seemed self-evident, it is not customary to explain the reason for each and every order received.

Q. Tell us just what information was turned over to you by the officer you relieved when you took the deck at 8 o'clock P. M.?

A. The information that was turned over was the course and the speed and that land was in sight.

Q. Is that all?

A. That is all in connection with the performance of my duties.

Q. Did you get any other information at the same time?

A. If I recall right I got information that we were standing away and would enter Westray Firth in the morning; this information, however, was purely unofficial.

Q. Who gave you that information?

A. The chief officer, Mr. Ricca.

Q. He being the officer you relieved at 8 o'clock the night before the stranding?

A. He being the officer I relieved.

[fol. 52] Q. Was the captain on the bridge during that watch?

A. He was on the bridge at the beginning of the watch or, to be correct, when I came on the bridge, but he retired shortly after.

Q. Did you have any orders as to a change of course that was to be made after awhile?

A. I didn't have any orders for any change of course, but the night order book was entered for the sailing officer to change the course at a certain time, I think it was 2 A. M.

Q. What is the night order book?

A. The night order book is a book wherein the master of the vessel enters orders for the officer of the deck. This night order book was always in use aboard this vessel and it is customary throughout the merchant service.

Q. I am to understand then that this night order book is a book in which the captain writes his orders to the officer of the deck?

A. Yes, sir.

Q. So that the orders in that book would be the orders of the captain and signed by him?

A. Orders of the captain and signed by him.

Q. Did you have any conversation with the captain that night as to why he was standing off the beach?

A. No, sir, I did not.

Q. Did he refer to it at all?

A. I think he informed me where land was and called my attention to the fact that it could be dimly seen with glasses.

Q. In your testimony this morning you said at one time the captain seemed to acknowledge something from the British officer and then gave an order to you to execute?

A. Yes, sir.

Q. Did you hear the words that were said?

A. I did not hear the exact words because they were on the star-board side of the bridge and I was on the port side.

Q. Was that the weather side or the lee side, which side were you on?

A. I was on the port side.

[fol. 53] Q. Is that the weather side?

A. That I do not recall, but the wind was only moderate anyway. The reason I did not hear was the distance between us and the fact that the conversation was only in an ordinary voice.

Q. You are not able to say then what passed between them?

A. I am not able to say the exact words that passed between them.

Q. What are you able to say that passed between them?

A. I am able to say a conversation passed between them.

Q. You don't know what was said?

A. I don't know what was said; no, sir.

Q. On direct examination this morning you have said that the British officer gave some information to the man at your wheel?

A. Yes, sir.

Q. Did he give him an order?

A. He didn't give an order, but he emphasized the order that I had already issued.

Q. How did he emphasize the order you had already issued, did you hear what he said?

A. I heard him instructing the man on what course to steady the ship by pointing to a headland nearly ahead.

Q. What did he say?

A. I cannot say the exact words now.

Q. As nearly as you can remember, what did he say?

A. As I remember he said, "You see that land ahead there?" whereupon he pointed; the man at the wheel answered in the affirmative.

Q. Is that all?

A. He said, "Well, that is it, when you get on that, steady on that."

Q. Did he actually tell him to steady on that?

A. I am not sure that he actually said steady on that headland, but he indicated to the man at the wheel that the land ahead was where he wanted to steer for.

Q. How did that highland bear when you first saw it?

A. When I first saw it it bore on the port bow, I did not take any bearings.

[fol. 54] Q. How many points on your bow?

A. About 4 points I would say.

Q. That would be broad on your port bow, wouldn't it?

A. Yes, sir.

Q. You have said that at 8:53 A. M. on the day of stranding you changed course to S. by E. three-quarters E?

A. Yes.

Q. On whose order did you change that course?

A. I changed it on the captain's orders, as I said, I always received my orders from him.

Q. I have also understood you to say that you kept that course until she struck?

A. What course?

Q. The corner you took S. by E. three-quarters E.?

A. Yes, sir.

Q. So at the time she struck you were steering that course?

A. Yes, sir.

Q. You say this chart house is used for navigation?

A. Yes, sir.

Q. That is not such a place as an officer of the deck could stand on watch in?

A. No, sir.

Q. It would be prohibited from standing a watch in there?

A. Yes, sir; absolutely prohibited and no officer would do it because he could not perform his most important duties in there.

Q. Was this notebook you spoke of that you preserved for quite awhile and then lost or you don't know where it is now, was that notebook the only book of memorandums or the only memorandums you made of your watch on the morning of the stranding?

A. No, sir; I also made a copy of my notes on a separate sheet of paper.

Q. Where is that?

A. That, I think, I have also destroyed; I saw it about six months ago in my home.

Q. Do you know where it is now?

A. I think I have destroyed it; I may have it, but am not sure.

Mr. McGrann: I ask you to make a search for it and if you find it send it over here and I will produce it.

[fol. 55] Q. Did you have a chart table on the bridge while officer on the deck while on the watch?

A. No, sir.

Q. Did you ever use a chart table on the bridge while pilot coming in to land?

A. Not while I was on board, it would be practically impossible to use a chart efficiently on the bridge.

Q. You say you notified the British officer about the breakers?

A. I did.

Q. Was the captain on the bridge?

A. The captain was inside at the chart house at that particular time.

Q. Did you notify him?

A. No, sir.

Q. You did not notify the captain at all, were not the captain and the British officer in the chart house together a short time before the ship struck?

A. They were.

Q. Was that before or after you reported the breakers?

A. I cannot say for sure now; I think it was after, but on that point I am not certain at all.

Q. After the ship struck did you locate her position by cross bearings?

A. I did not, the chief officer did.

Q. How much water was she drawing forward?

A. I think it was two fathoms.

Q. She was drawing twelve feet forward?

A. Yes, sir.



Q. You have said before that you exchanged signals with another British war vessel?

A. Yes, sir.

Q. Did you have the deck at that time?

A. I had the deck at that time; it was on the same date that the prize officer and crew came aboard.

Q. You made your number to them did you, made your signal?

A. Yes, sir.

Q. You have said that the British officer told you to bend on and hoist the code flag X was it or some letter?

A. I am not sure if it was X, it was one of the international flags.

Q. Do you recall his language in that connection, how he came to acquaint you with his wishes in the matter, the exact language he used?

A. I left the bridge, I went down in the cabin and said there [fol. 56] is a British war vessel; I hoisted up our international code numbers; is there any other instructions; I received orders to hoist up this particular flag of the code and proceeded to the bridge again, where I executed this order.

Q. That was what the captain told you to do?

A. That was what the British prize officer told me to do.

Q. What did the captain tell you to do?

A. The captain did not tell me anything.

Q. When you reported this British vessel, this British warship, to him what instructions or answers did he make if any?

A. He answered, as I said, that I should hoist this particular flag.

Q. The captain said that?

A. The British prize officer.

Q. Where was he?

A. In the cabin.

Q. With the captain?

A. With the captain; yes, sir.

Q. What was his language, do you recall the exact language he used?

A. I do not recall the exact words.

Q. As nearly as you can recall, what did he say to you?

A. He said, as nearly as I recall, he said either hoist or run up such and such a flag.

Q. When you went into the cabin at that time to whom did you address your remarks?

A. I didn't go into the cabin, I stood on the deck above and hollered down, the door was open.

Q. To whom did you address your remark?

A. I addressed my remark to the persons that were in the cabin.

Q. Generally; did the prize officer actually order or did he request you to hoist this flag?

A. Well, I took it as an order because of the fact—

Q. What was it he said to you?

A. He said for me to hoist this particular flag.



Q. Can't you remember just how he said that to you, I want to know that?

A. I cannot remember just the exact words he used.

Q. Did he say please hoist the flag or hoist the flag or what?

A. He didn't use any words such as please; he simply said hoist such and such a flag.

[fol. 57] Q. Did the captain have anything to say at that time?

A. Not that I heard.

Q. Did you get any orders from the captain at that time to obey the British prize officer?

A. No, sir; I did not stop any longer; I proceeded to the bridge immediately because I was very anxious to give the British war vessel the information he desired in order that he should not interfere with our voyage.

Q. Did you actually leave the bridge to get that information?

A. I actually left the bridge to get that information.

Q. While you were officer of the deck?

A. While I was officer of the deck.

Q. You have stated that Mr. Fleming wrote up the log for your forenoon watch on the day of the stranding?

A. Yes, sir.

Q. Do you know when and where he wrote that up?

A. I don't know; I think he wrote it up several days after the stranding.

Q. Was he on the bridge at any time during your watch on that morning?

A. No, sir.

Q. You have said that the log was incomplete, do you mean that there were other matters that would ordinarily have been entered in the log but were left out?

A. Ordinarily they perhaps would not have been entered, but in view of the desirability of having this information now the log is incomplete.

Q. By that do you mean that there were other matters bearing on the stranding that would have furnished more information?

A. Yes, sir.

Q. You have also stated that the log was incorrect?

A. In one respect; yes, sir.

Q. These matters that were left out of the log, if you had written up the log would you have put them in?

A. If I had written up the log after the stranding I certainly would have put them in.

[fol. 58] Q. Do you know of anything that happened on the morning of the stranding before you took the deck at 8 o'clock?

A. I know that some time before I came on watch we began to proceed for Westray Firth.

Q. You don't know any of the details of handling the ship before you took the deck?

A. I don't know of any other details except we went under full speed again.

Q. Were you heaving the lead that morning before you struck?

A. No, sir.

Q. Were you heaving the lead at any time on this voyage before you struck?

A. No, sir.

Redirect examination by Mr. McGrann:

Q. On cross examination you have designated some place for which you had been proceeding before the time that the naval officer and the prize crew came on board, can you indicate it on this chart which I show you; I think you said it was to the north of the Orkney Islands?

A. Through here (indicating on chart).

Q. Just draw a line.

Witness does as requested.

Q. Put your initials under that line, please.

Witness does as requested, indicating an arrow underneath which he puts his initials C. J. on chart No. 4840.

Mr. McGrann: I offer the chart 4840 in evidence.

It is marked libellant's Exhibit 4.

Q. I don't think I asked you before, but I will ask you now, what license did you hold on that occasion?

A. On that occasion I held a second mate's of any ocean and any tonnage issued by the United States local inspectors of New York.

Q. In reply to the question that was asked you about the British [fol. 59] naval officer actually directing the navigation do you consider the incident of the direction to the wheelsman a direction of the navigation?

Mr. Phillips: Objected to.

A. No, I consider the very fact of his presence aboard as evidence that he is directing and in command of the ship.

Q. When you say direct the navigation, do I understand that you did not see him actually work out any navigation or what do you mean by the term "direct," how do you interpret the term "direct the navigation"?

A. Direct the navigation; well, the way I interpret it is the officer who is in charge of the ship directs the navigation, practically everything done on board the ship is in connection with the navigation of the ship.

Q. I am referring now to your answer to the question which was put to you, what did you understand was meant by that question directing the navigation?

A. By that I presume that Mr. Phillips meant the actual science of navigation.

Q. You mean coming out on the bridge and setting the course, directing the wheelsman by voice, is that the way you interpret it?

A. Yes, sir; that is the way I interpret it.

Q. Please refer to libelant's Exhibit 1, bearing in mind your previous testimony that you were on a course about S. E. at one time and state whether or not the course S. by E. three-quarters E. would set you closer or further away from the position on which you subsequently stranded?

A. The course S. by E. three-quarters E. would take us away.

Q. That is, it tended to carry your course farther to the westward, would it?

A. To the southward and westward.

Q. In other words, if you had followed the course approximately S. E. for the headland which you say was pointed out by the naval [fol. 60] officer would that have carried you into clear water?

A. No, sir; that would have carried us into foul water sooner.

Q. You have told Mr. Phillips that you did not notify the captain when he was in the chart house about this breaker incident, that is, your having pointed out breakers on your port hand to the British naval officer, have you any reason for not having reported to him this incident, if so, state what it was?

A. Well, the first reason was that the captain was in the chart house; I was on the bridge keeping particular lookout for mines, floating mines; furthermore, I notified the British prize officer and of course considered that sufficient authority to notify; furthermore, he gave me the assurance that everything was safe and I naturally let the matter drop.

Q. Did he himself see these breakers that you pointed out?

A. He saw them himself and looked at them through his glasses.

Q. You didn't have any other pilot on board this vessel, did you, beside the British naval officer, if I can term him a pilot?

A. We did not have any pilot aboard.

Q. When you sang down as you have stated about the cruiser incident and your having hoisted a signal letter where did you go to give that information, just what point did you go to?

A. I went on the port side after part of the lower bridge, this lower bridge deck covers the officers' quarters and the cabin; standing on this lower bridge deck I bent over and sang out.

Q. Was that any considerable distance from the bridge on which you were keeping your watch?

A. The bridge was situated above this lower bridge.

Q. And you had simply to descend from the upper bridge down to the lower bridge, is that the idea?

A. Down to the lower bridge and about 7 or 8 feet farther aft from the ladder.

Q. In reference to the entries in the logbook which you say you didn't have time to write up are there any matters now that you can recall that you would or might have entered in the logbook which [fol. 61] we have not now covered on your deposition?

A. No, everything that occurred before the stranding I have stated in my testimony. What else I had entered in my notebook

is mostly the names of the vessels that came to assist us and the times that the hawser parted.

Q. Those were matters subsequent, after the stranding?

A. After the stranding; yes, sir.

Q. In marking this position on the chart Exhibit 1 you have located the position approximately, I take it, since you didn't take bearings yourself, is that correct, this position of the stranding?

A. Yes, sir; that is approximately.

Q. I notice on this chart the soundings of water immediately around the shoal itself as shown on the chart are rather deep?

A. That coincides with the way we were stranded because we were afloat aft.

Q. Was it deep water aft?

A. It was deep water aft, we were afloat aft.

Q. Then would the lead have shown you anything immediately before stranding if you had used the lead?

A. I don't hardly think the lead would have been sufficient.

Q. That is, I refer to a hand lead?

A. Yes, sir; the lead would not have been sufficient to navigate by in those waters.

#### Recross-examination by Mr. Phillips:

Q. Why would not the hand lead be sufficient, by that I take it you mean 20 fathom hand lead, don't you, isn't that what you usually have?

A. A hand lead?

Q. You had a hand lead on board the Llama, didn't you?

A. Yes, we had a hand lead and the usual——

Q. Did you have a Lord Kelvin machine?

A. Yes, sir; but lead would not have been sufficient to navigate by in those waters because of the fact that the reefs located in there are very steep.

[fol. 62] Q. Did you at any time use any kind of sounding machine?

A. I did not use a sounding machine at any time.

Q. Did any one on board the vessel to your knowledge use any kind of sounding machine to get a sounding, or lead?

A. Not from the time we passed Newhead until the time we struck.

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New York, June 19, 1920.

Further depositions held at the office of Messrs. Kirlin, Woolsey, Campbell, Hickox & Keating, 27 William street, New York City.  
Present as before.

THOMAS EDWARD CLINCH, being duly sworn and examined as a witness for the libellant, testifies as follows:

By Mr. McGrann:

Q. What is your occupation?

A. Mariner.

Q. How long have you been following the sea?

A. Since 1885.

Q. What has been your experience, captain, just what class of vessels and in what capacities?

A. Apprentice, seaman, mate and master.

Q. How long were you master of vessels?

A. Since 1912.

Q. Were you ever employed by the Standard Oil Company of New Jersey?

A. Yes.

Q. In what capacities?

A. As mate and master.

Q. What vessels were you master of?

A. Master of the Llama and master of the Hilton.

Q. Are you duly licensed, have you held any licenses, if so, what?

A. Held a British master's license from March, 1900, and American master's unlimited since 1902.

[fol. 63] Q. Do you recall when you took command of the Llama about?

A. Yes, sir; in May, 1915.

Q. Were you on the Llama and were you in command of the Llama at the time she stranded, October 31, 1915?

A. Yes, sir.

Q. Had you been on her continuously from the time you were first master?

A. Yes, sir; three trips to Europe.

Q. Can you give us a brief description of the Llama?

A. The Llama was originally—she flew the German flag, she was a vessel over 300 feet long, about 315 or so, about 44 feet beam, loaded she drew about 25.6 forward, that was her lowest draft.

Q. What was her general construction, her type?

A. Oil tank, just built for an oil tank.

Q. With compartments?

A. Seven compartments, seven tanks, engines aft.

Q. Single screw?

A. Single screw.

Q. What was her fuel?

A. Coal.

Q. Coal burning?

A. Coal burning.

Q. Now on this voyage on which she stranded, when about did you leave New York?

A. About October 14th to the best of my knowledge—the 14th.

Q. Where were you bound?

A. Bound to Copenhagen via Kirkwall—I am not positive of that, I don't know whether Copenhagen or not, anyhow we had to call—had to go via Kirkwall.

Q. What cargo did you have?

A. About 4,400 tons of gas oil, 300 barrels of colza oil and a few barrels of glue, I think 30 barrels.

Q. What was the condition of the Llama?

A. Seaworthy in every way.

Q. How about her crew, what sort of a crew?

A. Neutral, Scandinavians, mostly on deck, a mixed crew in the engine-room, probably some Spaniards, but all licensed officers, all [fol. 64] the officers and engineers practically American citizens, the petty officers, too.

Q. Did you have a full complement?

A. Full complement.

Q. Now, just describe briefly the course of your voyage, whether anything transpired up to the time of reaching the vicinity of the Shetlands?

A. Nothing—just the ordinary voyage until we got off the coast of Scotland—that was all until the morning of the 28th—we had bad weather for two or three days, say from the 26th, 27th and 28th, but that was ordinary.

Q. Was that October?

A. October.

Q. What occurred, if anything?

A. On the morning of the 29th we were held up by a British auxiliary cruiser.

Q. Do you know the name of this cruiser?

A. No.

Q. What were the circumstances, just describe everything that occurred.

A. We were laying to for bad weather, waiting to proceed, in the vicinity of the coast, the cruiser comes along, this was about—I had been going since 1914, since the beginning of the war and it was an ordinary circumstance, you expected to be held up by these ships—she came along and sent her crew aboard, this cruiser told us what ship is that, the ordinary signals and sent a boat aboard with an armed guard, an English lieutenant and I think about six men.

Q. Did you meet them?

A. No, we stopped and they got to the windward of us and sent a boat to the leeward.

Q. Did you meet them personally when they came aboard?

A. Yes, met them at the gangway as usual.

Q. Just describe what occurred between you and the officer in charge of this armed guard?

A. Well, he said good morning, the officer in charge, the men disbursed as usual, they had their orders, good morning he says, we have orders to take you to Kirkwall, well, I said, we were bound there anyhow, he said, that is all right, so with that we went up there—[fol. 65] went up in the chart room, he signalled over to his vessel,

and we were ordered to proceed, his orders were full speed ahead, captain.

Q. That is he gave you those orders?

A. He gave me those orders, yes, orders, to proceed full speed ahead, we put the vessel full speed, put her on her original course to the north of Scotland, to the north of the Firth and we got in the chart room and I says which way are you going——

Q. You said to him how are you going?

A. I said to him which way are you going, he went into the chart room, the chart was laid out, I got out the chart that he wanted, I says we will go through the Fair Island Passage or through the Westray Firth, he says we will go through the Westray.

Q. Had you laid down your course or made any plans as to what course you would pursue if you had not been instructed otherwise?

A. If I had not been held up I would have went through the Fair Island Passage to the north of the Orkneys and around the coast right down the Fair Island Passage.

Q. Why would you have taken that passage?

A. It was more safe.

Q. In what respect?

A. More sea room, I mean just as safe there as in the Atlantic.

Q. Captain, I show you Chart No. 4840, entitled the North Sea, which has already been marked libellant's Exhibit 4 of December 1, and ask you to indicate on that chart by this pencil what course you would have pursued in so far as is shown on that chart?

A. Here is Skea Skerries, here is the Westray, well, we would naturally have come this way in deep water right through or where there is an open passage of probably two miles, this is the passage we generally maneuvered during the war, all up through here, what is called the Hole proper, that is between the Shetlands and the Orkneys, coming from Skea Skerries, come the same way because you got more sea room between here and there.

[fol. 66] Q. That is between the Shetlands and Fair Islands than between Fair Islands and the Orkneys?

A. Yes.

Q. You also indicated a course westward from Skea Skerries?

A. Yes, you took the same.

Q. That is between Fair Islands and the Shetlands?

A. Yes, between the Orkneys and here to the north of Fair Island, that is the safe passage.

Q. You have indicated by a red pencil mark, is that the course you intended to take?

A. Yes, right up here and down here to Auskerry.

Q. Here is another chart on a larger scale, this is numbered 4464 and is called the Orkney Islands and has already been marked libellant's Exhibit 1 of December 1, suppose you also indicate on that chart the course which you purpose taking, does that show?

A. This doesn't show the Fair Island Passage, it is up here.

Q. To the north of that, is it?

A. Yes, 59.31 Fair Island Passage——



Witness looks at the chart and says it is to the north of that.

Q. Suppose you mark a continuation from Fair Island Passage down to where you were going?

A. We would have come right—this is the Westray Firth, here is Noup Head and here we would have come right down between the Orkneys and the Shetlands and come down here to Auskerry, this is the light here, this is Auskerry Sound.

Q. Run your course down roughly.

A. Right through the north, right over here, this is the Westray, here we would have had Noup Head to the south here, this is the passage through the stream down into Kirkwall.

Q. Just indicate by letters the course you have marked, A B C.

A. To the south, this is Auskerry right there.

Witness marks the course A B C.

Q. Could you have gone to the southward between Fair Island and the Orkneys?

A. Yes, there is room there if the weather was fine and clear.

[fol. 67] Q. What became of the armed guard, you said they disbursed, what did you mean by that?

A. They disbursed, they took the watches I believe, that is one man went to the wireless room and one man on the bridge, standing watches I suppose.

Q. Did you see them there?

A. Yes, almost beside me.

Q. Did the officer say anything to you about what the men were to do?

A. No.

Q. What his own men were to do?

A. No, sir.

Q. Did he communicate with you in any way as to what the object of the men on board was?

A. No, sir.

Q. You have designated these men as the armed guard, why do you call them the armed guard?

A. Well, they come aboard armed, they came aboard armed and I believe they came aboard to take charge of the vessel in all conditions to see she was taken according to the British Admiralty orders, wherever they wanted to take her.

Mr. Philips: I move to strike out his answer as stating a conclusion.

Q. What arms did you see?

A. Rifles and revolvers.

Q. Did they carry these arms all the time on board?

A. The man on the bridge he was armed with a revolver, the officer was armed with a rifle, the officer and the man on bridge—the men on duty were armed and the others were supposed to have them on at all times.

Q. Do you know approximately the position of the Llama when she was boarded as you have described?

A. About 400 miles westward of Kirkwall, the latitude and longitude I don't remember, it is in the logbook probably.

Q. I ask you to refer to the logbook which has been marked libellant's Exhibit 3 for identification and refresh your recollection by referring thereto, of the noon position of October 29, 1915, just state it on the record?

A. Noon position 58 degrees 56 minutes N. latitude, 11 degrees 33 minutes W. longitude, that was the noon of the day we were boarded.

[fol. 68] Q. At what time were you boarded?

A. 7:30, here it is, 6:59 stopped by British cruiser, they were all ready.

Q. Does that accord with your recollection?

A. Yes, it was daylight and it was late in October, that was about daylight when they came aboard, probably had us in view for three or four hours previously.

Q. That was on the morning of October 29, you have testified that certain conversation took place, describe what you did in pursuance of that conversation, if anything, after you were instructed that you would go through the Westray Firth?

A. We proceeded toward—put the vessel on a course to the north toward the Westray, Noup Head, which we reached about 8 P. M., we sighted land on October 30, it was cloudy weather, we did not think it safe or he did not to proceed through the Westray Firth at night under the weather conditions, if it had cleared up he intended to make the passage during the night, claiming that he was well—that he knew the Westray Firth, knew the passage well, the weather continued cloudy and slightly hazy during the night, at daybreak when we could see the land, about 7:45 A. M. he said, I think it is clear now to make the passage, so we put the vessel on the course S. one-half W. heading towards the passage.

Q. Was there a light on Noup Head?

A. No, sir; the light was extinguished; there was a lighthouse there.

Q. How was this course S. one-half W. arrived at, captain?

A. That was supposed to take us, the prize officer in charge of the armed guard thought that was a safe passage and would take us—as far as I could see, he had charge of the navigation through the Firth.

Q. Did he say to you, take this course S. one-half W. or did you say to him?

A. He says we will head S. one-half W.

Q. Where was he when he said that?

A. Went in the chart room; we had been there two or three hours in the morning, from 5 o'clock to 8 o'clock, and he laid out the [fol. 69] course S. one-half W., intending to pass about a mile and a half or two miles from the head, the lighthouse.

Q. Who gave the order to the officer in charge of the watch or the wheelsman, who transmitted that order?

A. He gave it to me and I transmitted it.

Q. Can you recall approximately how long he remained on that course, what change you made and the circumstances, if so, please do so?

A. It was about 7:45 when he headed in on the course S. one-half W., about 8:10 we had the lighthouse abeam and we continued on that course until about 8:40, when he sighted—he seen land on the port side which he thought was Fersness, he says there is Fersness, we will head for that; I said all right; he went to the wheelman and said, there is that point of land steer for that; all right, we headed for that land about 8:40; we headed on that until about 8:50, then seen the two pieces of land, two small islands open up on the port side and he said there is the Holms, then altered the course, says we will head for that; then he said S. by E., we made for these two pieces of land, she was heading S. by E. three-quarters E.

Q. Now, to go back, you said that the officer made out some land which he designated as Fersness, did he express this to you?

A. He expressed it loudly to everybody so they could hear.

Q. Where were you two standing at that time?

A. On the bridge in the vicinity of the pilot house.

Q. Did you have a chart, were you doing any consulting of a chart?

A. Looked at the chart occasionally; there was no chart on the bridge, it was in the pilot house.

Q. How was the pilot house located with respect to the bridge?

A. Probably about nine feet—nine or ten feet from the helmsman.

Q. Was it an enclosed chart house?

A. An enclosed chart house.

Q. Was it on the same level as the bridge?

A. On the same level.

[fol. 70] Q. And when the British officer indicated this point of land or highland or whatever it was and said we will head for that, did you consult the chart to see what the course would be?

A. No; I left it all to him.

Q. Did you later find out what the course was when you got on this—

A. Afterwards, after the vessel was ashore and everything.

Q. No; I mean at the time, captain, what course was it you took?

A. S. E.

Q. Then you said that was about 8:40?

A. About 8:40.

Q. And you pursued that same course until the change that you say was subsequently made at about what time?

A. 8:50.

Q. Are these times times which you can express exactly, or is this your own judgment?

A. It is taking the course and then glancing at the pilot house clock and making sure it could not be more than one minute out.

Q. Then after taking this southerly course which you have said was what, after the S. E. course?

A. S. by E. three-quarters E.

Q. Were these courses true or magnetic courses or what?

A. Magnetic compass courses.

Q. Then where were you when you took the southerly course?

A. We had just sighted—

Q. I mean you personally?

A. On the outside of the bridge, outside the chart room on the bridge.

Q. Did you remain in that same spot?

A. Stopped there all the time until after she was on the course and we seen these two islands ahead and went in the chart room to put down this new course, where it would fetch us, while I was in there she struck.

Q. Was any report made to you from the time that you set this southerly course, that is S. E. by E. three-quarters E. up to the time the vessel struck?

A. No report at all, sir.

[fol. 71] Q. Where was the prize officer?

A. He was on the bridge, close to the helmsman, between the pilot house and the helmsman.

Q. Who was the officer on watch?

A. He was away over on the port side—Jensen, the third officer.

Q. Did he have the watch from 8 o'clock on?

A. From 8 to 12 is his watch.

Q. Whom had he relieved?

A. The chief officer, Mr. Ricca.

Q. What did you do when the vessel struck?

A. Quick as I could possibly reach the telegraph put the vessel full speed astern.

Q. Did you go to the bridge?

A. Right out the chart room, jumped out, put the engine full speed astern.

Q. Did you make any remarks to anybody at the time?

A. Said we had struck a mine.

Q. Why did you say that?

A. Because there was mines laid around there; it was a thing you naturally expected to meet any time; we all thought she had struck a mine; we thought we were clear of land, didn't think there was any danger from the land and there was lots of mines in the vicinity, you see, there at all times.

Q. Now, did you see any indication of breakers in the vicinity at the point where you struck?

A. Breakers about a mile on the port bow, from half a mile to a mile.

Q. How was the water in the immediate vicinity of the ship?

A. Nothing to indicate any shoals at all, fairly smooth.

Q. How was the weather at that time, at the time you struck?

A. The weather was cloudy, overcast, heavy swell from the S. E., a swell not a sea, kind of a gloomy morning.

Q. Was there any wind to speak of?

A. Blowing in gusts, just like after a gale of wind was finished; we had been in a gale for three days, just the finishing up of the gale, just finishing—squally, gusts.

[fol. 72] Q. Did you take soundings by the ship?

A. None, not till she was ashore.

Q. What soundings did you find afterwards?

A. We got about 15—12, 2½ fathoms that would make 15 feet forward, amidships 5 fathoms, 30 feet, astern we got the same, 5½ fathoms; she was afloat everywhere but on the bow.

Q. Did you examine the ship at that time and if so what was the condition you found?

A. Everything was all right, everything, the ship was all right except at a time there after a while, a couple of hours after she began to make water, the tank was pierced so that the outside water was getting oily and we knew she was pierced.

Q. Could you make any definite examination to find out how and where she was pierced?

A. No, sir.

Q. Did you find out later?

A. We found out because No. 2 tank began to run down.

Q. What efforts were made to release the Llama, if any?

A. As soon as she was ashore the wireless operator was instructed by the officer there to wire Kirkwall.

Q. By which officer?

A. The prize officer or the armed guard officer—that the Llama was ashore, wanted assistance; in a while there was two torpedo boats off, a couple of towboats, they sent all the assistance they could, plenty, but they put hawsers aboard and they would last about ten minutes and then break off their hawsers, the two torpedo boats put lines aboard and they broke in about ten minutes, then sent two trawlers out and their lines would break.

Q. What were these vessels trying to do?

A. Trying to pull her clear, to get her off, afloat again, but it seems she had been pierced, that there had been a rock up in No. 2 tank and they could slide around any way they wanted but she could not move, they could not get her clear, she was simply pierced.

[fol. 73] Q. Do I understand that she was pivoting on this rock?

A. Pivoting on this rock, they could turn her any way they wanted but she would not go astern.

Q. Well, how long did she continue on the strand and what happened then?

A. She continued till that evening—till the evening there and the tanks began to go, the water began to flow into her, she was open to the tide, the bulkheads begin to go and that evening the crew went to Kirkwall, sent the crew there for safety, we went aboard the guard boat called the Evening Star, went aboard again in the morning and efforts were made to pull her off again.

Q. This was—the stranding occurred on what date?

A. On October 30th.

Q. The 30th or 31st?

A. The 30th, I think, sir.

Q. According to the log book that date is the 31st?

A. Nine o'clock on the 31st.

Q. And then when did you finally leave the vessel?

A. We left the vessel I think November 2nd—we left her that night and returned the next morning and that evening we abandoned her for good.

Q. Why was she abandoned?

A. Because she was full of water and we were scared that No. 7 tank had given way and the oil was going into the engine room, we pulled the fires there, there was danger of an explosion.

Q. Did you consult with these various officers from the vessels that were there as to what should be done, how did you arrive at the method of procedure?

A. When they came there they took complete charge of the vessel.

Q. Who are they?

A. The naval authorities from Kirkwall, they advised to abandon and I refused to abandon personally, they asked me—told me to get off and I said no, I won't get off—but they took charge of all operations and all procedure, eventually that evening we had to abandon.

Q. What evening was this, the first or second day after?

A. The second day after.

[fol. 74] Q. What was the last you saw of the vessel?

A. We went to Kirkwall—I will have to refresh my memory from the log, it is four or five years.

Q. This log book however seems to end on the 31st of October?

A. That is when the crew left.

Q. Here is another one ends the 3rd of November?

A. I think it was about the 5th when she went to pieces eventually, we went to Kirkwall I think the day after this and every morning used to go out there, the British Government put a boat at our disposal, myself and the engineer, to go and have a look at the wreck until she fell to pieces, I think she broke up about the 5th.

Q. Did you see her in that condition?

A. Yes, sir, see her when she was finished.

Q. Did you save any of the cargo?

A. Absolutely nothing was saved, the two boats that the crew went ashore with were saved, that is about all.

Q. Why didn't you save the cargo, what was the reason?

A. The cargo when she was pierced and the bulkheads gone, opening up the tanks, to the tide, we tried to get her off, but there was no means, she was pierced and when the bulkheads began to go she was practically open, the sea came in and washed the oil out, there was nothing to save.

Q. Captain, you have stated certain courses that you took under the direction of the officer in charge of the armed guard, I should like to have you go to that chart which I have obtained of the vicinity and first put down approximately as nearly as you can where you say the stranding took place?

A. Yes, sir.

Q. Have you marked about where it took place?

A. Yes, sir.

Q. Suppose you draw a red circle around that cross?

Witness does as requested.

Q. Captain, tell me how you arrived at the place of the stranding, what do you base your statement on?

[fol. 75] A. On the course as steered, working right back from the time that we—from the course given at 7:45 up to the time.

Q. Were any bearings taken of the vessel at the point of stranding?

A. Yes, sir.

Q. Who took those bearings?

A. Mr. Ricca, the chief officer.

Q. Did you yourself verify them roughly or in any way?

A. Roughly and then we all took bearings for that matter but we arrived at N. 4 W. Noup Head, and arrived at the conclusion that bore No. 4 W. and Sacquoy about S. 63 W.

Q. At that time did you determine approximately where the vessel was, that is when you were on the strand?

A. Yes, sir.

Q. And this is where you have now marked on the chart, is that where you determined at the time?

A. Yes, sir.

Q. Now, captain, you have said, as I understand that the last course you were on was a southerly course?

A. S. by E., three-quarters E.

Q. Suppose you take a rule and lay down for us from the point of S. by E. three-quarters E., was that magnetic?

A. Yes, magnetic.

Q. Was your compass magnetic?

A. Not one degree out of any course, finely adjusted, Ricco had been on the vessel two voyages and we took bearings every time they were available and there was no trouble?

Q. What course is that?

A. S. by E. three-quarters E., that is the last course, this was 9:07 when she went ashore.

Q. Just mark this last course up to the point where you stranded?

A. Seventeen minutes.

Q. Where do you get 17 minutes?

A. The ship made eight knots an hour from 8:50 to 9:07, that would give us 17 minutes, that is from 8:50 to 9:07, that is 2.3 miles on that course.

[fol. 76] Q. Now, captain, I ask you to lay down, if you say 2.3 miles from the point of stranding, go back on that course?

A. Yes, sir.

Q. Have you done so?

A. Yes.

Q. You have pointed up there where you have the course under the figure 20 on the chart, is that right?



A. Yes.

Q. Now, from that last point, captain, let us run back your preceding course, what was that?

A. S. E.

Q. Run that back and see where that brings you?

A. S. E., that was 8:40 to 8:50, 10 minutes, 1.3 miles, that is the S. E. course, sir.

Q. You have laid down the course on the chart, you have marked above the end of that course the figures 8:40, suppose you take the blue pencil here and circle that last point with a small circle around it?

Witness does as requested.

Q. Now, from that last point, captain, will you run back again the course preceding?

A. S. one-half W., that was the original course started at daylight.

Witness does so, designating with a blue B.

Q. Now, put a C opposite the 8:40 there, a D opposite the next point over 20 and an E opposite the red circle?

Witness does so.

Q. Captain, according to your testimony this change of course S. to S. E. which was made at point C as indicated on this chart was headed for some landmark, I understand, was it?

A. Yes.

Q. Suppose you just project that line C-D on the same course and see where that brings up, continue it right from the D?

Witness does so.

Q. Where does that touch the land?

A. Just a little to the southwest of Stennis Hill, I think they call it.

[fol. 77] Q. What is the height as shown on that chart of that land?

A. About 299 feet.

Q. What does it show on the chart, it doesn't look that way to me?

A. 218 feet.

Captain answers after looking at the figures through the magnifying glass.

Q. What point was it that you said the prize officer indicated as being the land for which he wanted to head?

A. He says that is Fersness.

Q. Fersness, is that what you mean?

A. Yes.

Q. Suppose you call that Fersness highland with a pencil and mark it way off here with a big K?

Witness circles the land marked Fersness and draws an arrow pointing to it and places the letter K beside it.

Q. I ask you to encircle Stennis Hill and mark that with an F.

Witness does so.

Q. Now, captain, I would like to have you take Fersness Hill which you have marked with an F and run a S. E. magnetic course back from Fersness Hill, back to the vicinity of C.

A. Yes, sir.

Q. Mark that line which you have now drawn at the westerly end with some letter, say, H, in blue, so that will be marked.

Witness does so.

Q. Captain, what was this little line here you drew on the chart, did you draw that line between the E and the red circle?

A. Yes, sir.

Q. What was that line?

A. That was supposed to be the bearing of Noup Head.

Mr. McGrann: If counsel does not object, I would like to erase that line because it is confusing; I will leave some record of it, but it is confusing.

[fol. 78] Mr. Phillips: Can you dot that line, that will make it distinctive?

The line which the witness indicated was the bearing from Noup Head is now indicated by blue dots.

Q. That line that you indicated as the bearing from Noup Head and which you have now indicated in blue dots does not represent any course which you were on at this time?

A. No; the bearing of Noup Head when she was ashore.

Q. To summarize your testimony, captain, as to the courses, I understand that you first came down on the line B C which was S. one-half W., which is marked S. one-half W. and that you then changed the course at point C and took the course marked on the chart C D which you say is S. E., that you then changed course at point D and took the course which you have already marked S. by E. three-quarters E., shown by line D E, leading to the point indicated by the red circle and which is the point of stranding, is that correct?

A. That is correct.

Q. Now, you have also drawn a line here, an extension of C D which is marked D F on the chart and which leads to Stennis Hill and at my request you have drawn a further line H K which represents the line of the course S. E., leading to Fersness highland?

A. Yes, sir.

Q. How do you account, if you can account, for the fact of your stranding at the point marked with a red circle E if at any time you were heading for the Fersness highland on the S. E. course?

A. Well, the officer, the naval attendant in charge must have mistook Stennis Hill for Fersness, when he seen what he thought was Fersness it must have been Stennis Hill; if it had been Fersness

he would have been all clear; he thought he saw the head that was Fersness, but he was heading for Stennis Hill.

Q. In order to make that plainer to me will you extend this line B C down to meet that line H K; suppose you dot it so that it won't [fol. 79] be confusing with the others.

A. Yes, sir.

Witness does so, draws a red dotted line from C to meet the line H K.

Q. According to the testimony if the point for which the prize officer headed was Fersness highland and you were on the course S. E. in accordance with that instruction, where would the change of course have been made as shown on the chart?

A. The course should have been changed to H K.

Q. I mean at what point?

A. Where the red dotted line reaches the line H K.

Q. That we will mark with the letter L; is that correct?

A. Correct.

Q. You had better draw a circle around the intersection.

Witness does so.

Q. You said there was some landmark which induced the change of course to the southeastward, S. by E. three-quarters E.; can you indicate what it was on this chart?

A. We sighted two small islands, the Holms.

Q. Will you circle those with a big circle on the chart?

A. The Green Holms.

Q. Mark that with a big M.

Witness does so.

Q. What course would have been pursued, if you know, after passing through Westray Firth?

A. She would have headed for these points here (indicating the Holms), not heading for the Holms, keeping them a little on the port bow, we would have been clear of all dangers.

Mr. McGrann: I offer this chart in evidence as illustrating this witness' testimony.

It is marked libellant's Exhibit 5.

[fol. 80] Q. Now, as to the times of these changes of course, I may say to you that it has already been testified by one of the officers, Jensen, that this change of course to the southward, that is the last course you were on at the time of the stranding was made at 8:53, you have assumed that it was 8:50?

A. 8:50.

Q. Would that discrepancy of three minutes make any substantial difference in the courses as you have laid them down there?

A. No, sir.

Q. It has also been testified by this officer, Jensen, that he placed

the time of stranding at 9:10, whereas you have said 9:07, would that three minutes make any material difference in the courses you have laid down?

A. Seems to be three minutes' difference everywhere.

Question repeated.

A. None; no, sir.

Q. Did you see these breakers which you have testified you thought you saw after the vessel stranded, prior to the stranding, or were they reported to you in any way?

A. They were not reported to me, but I believe I seen them after—it was common knowledge then after the officer in charge of the armed guard had said everything was all right.

Q. Were there any breakers or were there any shoals or rocks in the immediate vicinity of the place where the Llama stranded?

A. None, sir; seemed all clear.

Q. It is alleged in the seventh article and the fifteenth article of the answer filed in this case that "while proceeding through the Westray Firth navigated by her officers and crew," etc., referring to the time immediately preceding the stranding; what have you to say as to the allegations that Llama was being navigated by her officers and crew at this time?

A. She was not navigated—we were under direct orders of the officers of the armed guard, whatever orders he gave was passed [fol. 81] through me, passed to the officer through me, to the crew, the officer on duty at the time.

Q. Did you or did you not initiate the course S. E. which you have laid down as C D on Exhibit 5?

A. No; I initiated no course, all courses were initiated by the British lieutenant.

Q. Did or did you not initiate the course D E which you have laid down on libellant's Exhibit 5?

A. No, sir; had nothing at all to do with the courses.

Q. Did you have any further conversation than that which you have already testified to in respect of a choice between going through Westray Firth and through the Fair Island Passage, with the prize officer?

A. No; only I asked what was the reason he was going through Westray Firth, I said—the general passage was through the Fair Island Passage, I said, what is the matter with the Fair Island Passage; well, he says, there is submarines operating around there and it is better to get in as quick as we can, or words to that effect, general conversation.

Q. Do you know how the tide was during this passage through the Westray Firth?

A. As far as I understand it was running ebb, just the turn of the tide at that time.

Cross-examination by Mr. Phillips:

Q. Captain, what licenses do you hold?

A. United States unlimited license and a British license.

Q. You hold them now?

A. Yes, sir.

Q. After the stranding of the Llama did you make a protest?

A. Yes, sir.

Q. Who took that protest?

A. In Dundee the United States consul.

Q. Did you at any time make any kind of a statement under oath to the British officer known as the Deputy Receiver of Wrecks at Kirkwall?

A. Yes.

Q. You made such a statement, made oath to it?

A. Yes.

[fol. 82] Q. Do you remember when that was?

A. That wasn't until the first or the second—probably the third of November.

Q. Could that have been the 2nd of November?

A. It was the day after arrival in Kirkwall.

Q. The matters relating to this stranding were at that time fresh in your memory, were they not?

A. Yes, sir; they were.

Q. Were the statements made by you the truth of the matter?

A. The truth as they struck me at the time.

Q. That is the time it was fresh in your memory?

A. Yes, sir; it was very fresh.

Q. In the course of your employment as master of the Llama, had you at any other time previous to this been boarded by a British cruiser at sea?

A. Four times.

Q. You stated you were bound to Copenhagen or some Scandinavian port by way of Kirkwall?

A. Yes, sir.

Q. You had orders to call at Kirkwall, however, before you left the United States?

A. Yes.

Q. Have you ever been in the naval service, captain?

A. No, sir.

Q. You have not?

A. I was in the reserve during the war, not previous to that.

Q. When did you leave the naval service?

A. In February.

Q. What were the circumstances attending your leaving?

A. I was disenrolled.

Q. For what reason were you disenrolled?

A. The war was over and to return to civil employment.

Q. Were you at any time court-martialed while in the navy?

A. No, sir.

Q. When this prize officer, as you call him, came on board your vessel, did he state that you were to take his direction as to the navigation of your ship?

A. He never mentioned anything.

Q. He did not?

A. No, sir.

[fol. 83] Q. Had you been through Westray Firth before?

A. The trip before.

Q. Captain, you were overhauled by this British cruiser in latitude 58.45 N. I believe, and longitude 11 degrees something W.?

A. Yes, roughly.

Q. Wouldn't that be considerably to the south of Westray Firth?

A. No, it must be to the north—it is to the southward, yes.

Q. Do you know how far south of Westray Firth that is?

A. No, I can't tell you.

Q. You may look at the chart, Libellant's Exhibit 5?

A. Yes, that is to the southward.

Q. What is the latitude of the fairway into Westray Firth?

A. The latitude?

Q. Yes.

A. 59.15.

Q. Now, if, as you say, you were bound to Kirkwall by the way of Fair Island passage, that would take your ship considerably to the north of Westray Firth, would it not?

A. Yes.

Q. And your course shown would be pretty well to the north?

A. Yes, we would have went well to the north.

Q. Were you on the great circle?

A. Yes.

Q. From the point out off the banks known as the Corner,—where did you start your great circle course?

A. Right from New York, not the corner, we never traveled that way.

Q. I am to understand then that as soon as you got clear of the coast you put the ship on the great circle for what point?

A. On the great circle for to clear Cape Race first and then away to the north.

Q. Then after clearing Cape Race did you keep as far as——

A. To the Pharaohs if necessary.

Q. Then on a great circle on a course which would take you to The Pharaoh Islands?

A. No, bound to Kirkwall on the great circle that would take us far north as they were to make the Fairway Passage.

[fol. 84] Q. So that at the time you were boarded by this British officer you were then pursuing the great circle track to the north of the Orkney Islands?

A. To the north of the Orkney Islands.

Q. After the arrival of the British officer did you take any sights?

A. No, no sights after the arrival of the prize officer.

Q. Was the weather such that sights could have been taken?

A. I think we took an evening sight, that was 5 years ago at the present time, but we had our position well in hand.

Q. From previous sights?

A. Yes, up to the time of making Noup Head everything was correct.

Q. Between the time you were boarded by the British officer and the time you made Noup Head did you take any sights or make

any calculations to ascertain the course to be taken to reach Noup Head?

A. Yes, sir.

Q. On the day of the stranding, captain, and from the time your ship was headed on the course S. one-half W., did any one on your ship take any soundings?

A. None.

Q. I understand that your vessel approached land about nightfall?

A. Yes, sir.

Q. And that your vessel laid off until daylight?

A. Yes.

Q. Who decided to lay off?

A. The officer in charge—the prize officer.

Q. You didn't decide to lay off?

A. I agreed with him it was better to stand off, looking after the interests of the owners.

Q. Did the British officer at any time give any orders to the officer of the deck?

A. Not to my knowledge—he had done—I mean not to my knowledge.

Q. Did the British officer give any order to any of your crew directly?

A. None.

Q. Do you recall the magnetic course your ship was on at the time you were overhauled by this British ship?

A. We were laying to at the time, bad weather.

[fol. 85] Q. What course had you been steering up to the time you were hove to?

A. Till we were pulled up?

Q. Yes.

A. I am not positive.

Q. You may refresh your memory from the log?

A. I think S. 70 E., on the regular great circle course whatever it was.

Q. On the great circle course for The Pharaohs?

A. Yes, S. 70 E.

Q. Captain, this great circle course you have referred to, where did that begin?

A. Well, the great circle from here, I don't know exactly.

Q. I mean this particular one you were on at the time you were hove to, where did that begin?

A. I couldn't say at the present time.

Q. You may refresh your memory from the log?

A. Always on the great circle coming and going, this must have been, we started from New York, the great circle coming this way, comes through Cape Race, you cannot go over the land.

Q. Wasn't your ship on a composite course or a mercator course?

A. No, not on a mercator course, on a composite or great circle.

Q. You had a composite course?

A. Yes.



Q. The idea being to get your ship in such a position as you could with safety and quickness on the great circle?

A. Yes.

Q. Well now, what was the position of that point where you begin to get on the great circle?

A. We were steering N. 80—

Q. Would it be about on the Grand Banks?

A. No, before that, it would take us to the north of Newfoundland altogether, the north of the Banks, 66, 75, 80—she went on this course about October 18th.

Q. What was your position at that time?

A. The position at that time at noon, 44.01 N. 55.46 W.

Q. At that point you took up the great circle?

A. I believe so, I took the great circle when it was first available, I mean when the land was clear, I have no chart here.

Q. I am trying to find out what you did, not what you would do, this is your recollection of when and where you got on the great circle?

A. Yes.

Q. And the great circle course from this position you have just described, latitude 44.01 N. longitude 55.46 W. the great circle course from that position was to take you north of the Orkneys?

A. Clear of the Orkneys, up Fair Island Passage.

Q. Up until the time you were boarded by the British ship you stayed on that track as laid down?

A. Yes.

Q. Do you know such a place as North Rona?

A. Rona Island it is, yes.

Q. North Rona?

A. Yes.

Q. Will you indicate that on the chart libellant's Exhibit 5?

A. We must have a bigger chart here besides this—10:35 on the 30th of October—it is up in the 60's.

Q. North Rona is then north of the Orkney Islands?

A. Yes, north of that chart.

Q. It is in fact north?

A. Must be close on to 60 N.

Q. North latitude?

A. Yes.

Q. That would be about 35 miles north of the Orkneys, wouldn't it?

A. About that, yes, sir, here is the position here, 59.17 at noon of this date.

Q. Of which date?

A. Of the 30th, this was 9 o'clock we will say 59 N. and 5.30 W.

Q. I just wanted you to locate the position of North Rona, it is in fact about 35 miles north of the Orkneys?

A. Yes.

Q. At any rate it is in about 60 degrees north latitude?

A. Yes, 59.17 we were steering east, about 59.20 say, 59.30 will be safe.

Q. It is to the north and east of the Orkneys?

A. Yes, sir, well to the north and east.

[fol. 87] By Mr. McGrann:

Q. Is it to the east?

A. Yes, sir—5.29 W.—to the westward of the Orkneys.

By Mr. Phillips:

Q. To the north and west then?

A. Yes, sir, it is to the west of us.

Q. Do you know the place called Skule Skerries?

A. Yes, sir.

Q. Where is that?

A. I guess that is where we struck.

Q. You struck on Skea Skerries?

A. Well, we passed this on our way too.

Q. You don't know where that is, do you?

A. Not at present, I can't recollect, if I had a chart I can tell.

Q. It is not on any of these charts?

A. Not on any of these charts.

Q. If you went to Kirkwall, captain, by way of North Rona, which way would that take you?

A. To North Rona?

Q. Yes.

A. Which way—I believe that would take us—North. Rona must be to the west and not on this chart, this is only a local chart.

Q. From your knowledge of its location, how would you say the course to Kirkwall by way of North Rona would be shown on this chart?

A. On this chart?

Q. Yes, such part as would come on this chart?

A. It would take us to the westward—I mean past Westray Firth.

Q. Past Westray Firth?

A. Yes.

Mr. McGrann: I ask right here that the stenographer please turn back to some of the questions counsel has asked about this witness being in the naval reserve and re-read those.

Stenographer does so.

Mr. McGrann: I state on the record here at this point that as [fol. 88] to the service of the witness in the naval reserve I consider this immaterial to the issues in question. Counsel has stated that he thinks they are material. Without any knowledge of the record of this witness I say to him that he is bound to answer counsel's questions although they do not in his mind have a direct

bearing on this case. It is for counsel cross examining him to show later that they do have a direct bearing and I presume counsel is prepared to do so. Now if there is anything in your naval record which will incriminate you, you are at liberty and I advise you as counsel, to decline to answer on the ground that they would tend to incriminate you. If however such is the case you may state so freely or you may state exactly what the circumstances are connected with your naval service as you choose. Now before going any further I should like to ask if this is entirely clear to you, what I have said, and if you wish to give counsel full information concerning the whole of your naval record, why you are at liberty to do so, if you know the meaning of what counsel asked or if you do not wish you would so state.

The Witness: I was court-martialed in Cardiff.

By Mr. McGrann:

Q. What was the nature of any difficulty you may have had?

A. Intoxication, I claimed I had the flu and was charged with being drunk.

Q. And you make this statement now freely, do you, that you were in difficulties—did you plead guilty or not guilty?

A. Not guilty.

Q. Do you consider that you were guilty of the charge?

A. I consider I was not—we had put four officers in the hospital in Nancy through the grippe or flu and I had the flu myself and I thought it was my business to bring the ship back to her base, which I did so.

[fol. 89] Mr. McGrann: I will rest here and I also wish to say on the record that I don't want any question raised whatever as to trying to conceal anything about this testimony.

By Mr. Phillips:

Q. In answer to an earlier question on cross examination you stated that you had not been court-martialed?

A. I had been.

Q. At the time you made that statement did you know that you had been court-martialed?

A. Yes, I did, but I was ashamed to admit it.

Q. That statement, it was false then?

A. I would have admitted it but I was ashamed to admit it.

Q. That statement was false?

A. No—I believe, I mean I don't know, you know as much as I do—it wasn't false to a certain extent.

Q. It was not the truth, was it?

A. I never received any orders from court-martial.

Q. But at the time you answered that question you knew you had been court-martialed?

A. No—yes, I did.

Q. So that statement was not the truth?

A. It was not correct.

Q. It was not the truth, was it?

A. No.

Q. Were you advised of the finding of the court-martial?

A. No.

Q. Do you know the reason why you were not advised?

A. No.

Q. Captain, if I tell you, if I say to you that the Secretary of the Navy advised the Attorney General that on November 30, 1918, the proceedings, findings and sentence in your case were approved, on the 26th of February the sentence was confirmed by the President and that the order of dismissal which was the finding in this case was not served on you for the reason that you had in the meantime deserted, what would you say to that?

A. I say I am very sorry, that is all.

[fol. 90] Q. Is that the fact of the case?

A. Not to my knowledge, you can understand this case as well as I can, a man was so ashamed that he could not show his face—everything I done was after the armistice—

Q. But on leaving the service did you receive any orders to leave?

A. I received no orders, I did not desert, I was under arrest and it never—

Q. Was that arrest lifted or were you freed or given any order to return to inactive duty?

A. No.

Q. And if I say to you that the Secretary of the Navy has also advised that you are now a deserter at large, what would you say as to the truth of that?

A. Well, I would say that I don't know nothing about that, this is what I can't see, how they can do that, but at the same time I was so ashamed of myself that I didn't know what to do on the job; I have suffered more than they have ever suffered, I can tell you.

Mr. McGrann: I presume that counsel's object in this is to challenge the veracity of this witness.

The Witness: That is it—could you strike out of the record about my denying that in the first place, or would you do so?

Mr. Phillips: I couldn't.

By Mr. McGrann:

Q. Have you ever consulted me about this particular matter?

A. Never mentioned in any way, shape or form.

Q. In making your statement to me you have never mentioned that?

A. No; never mentioned naval service to you at all.

Mr. McGrann: I may say and of course counsel will accept it that if the matter had been brought to my attention by this witness I would have advised him to be very frank, although it might incriminate him, and to state exactly what every circumstance was

that had any bearing on his naval reserve service, I don't consider [fol. 91] that the point of what happened to him is material to the points at issue in this case except counsel's statement that he is challenging the witness' veracity.

Mr. Phillips: That is the purpose of that line of questioning.

By Mr. Phillips:

Q. Captain, in this statement you say you made to the Receiver of Wrecks at Kirkwall, do you recall that statement?

A. Well, yes, roughly, the main points of it.

Q. Do you recall having said in that statement that Noup Head—the Westray was ahead about four miles to the N. E., about 8 P. M. on the evening of the 30th and that you decided to lie off the land until daylight?

A. Yes.

Q. You made that statement?

A. I or we, it should have been we.

Q. What did you actually say?

A. I don't know, that is five or six years back, but you must remember in that time we simply came in—I mean just simply came in after the loss—I might have said I or we.

Q. Did you sign that statement?

A. I made a signed statement before him, yes.

Q. Did you read the statement you signed and swore to on that occasion?

A. I think I had a copy of it at the time.

Q. Did that statement contain the statements you made, were they properly set forth in it?

A. I am not quite sure, the statements I made—I made another statement before the consul in Dundee which was made up probably 10 or 15 days afterward—but this Receiver of Wrecks, that was simply the loss of the ship.

Mr. McGrann: Which statement is this you are referring to?

Mr. Phillips: One made in Kirkwall before the Receiver of Wrecks and another one made before the Consul General in Dundee.

[fol. 92] Q. Now, in your statement before the American consul at Dundee you say that the prize officer decided to lie off Noup Head?

A. Well, he had full control of the ship from the time—I have been under these prize officers about ten times, not less than ten times during the war, and when they come abroad they have full control of the ship; we are simply under them; we obey their orders in every particular, although they pass the order from themselves to me and I pass it to the officer of the deck and then to the crew.

Q. Well, in the statement made right after the stranding you say you decided and in the statement made some 10 or 12 or 15 days later you say the prize officer decided?

A. Whatever he decided, I decided; he had the first decision and I obeyed his orders implicitly.

Q. Both of the statements are under oath?

A. I or we in that case is complete.

Q. But they differ?

A. They cannot be different, they follow the same main basis of the stranding, they must come together because the thing is correct.

Q. On the night you arrived off Noup Head did you have any conversation with the British officer as to what was to be done then?

A. The idea was that we would stand off until daylight and if it cleared up during the night we would proceed in, the weather was gloomy and dark and the first chance we would make in for Kirkwall through the passage.

Q. Did you say to the British officer that you would wait for daylight and then proceed through Westray Firth as you had gone that way the voyage before and knew the Firth?

A. I knew nothing about the Firth—I had been there——

Q. Did you say that?

A. Not to my knowledge.

Q. Are you sure whether you did or not?

A. I didn't to my knowledge.

[fol. 93] Q. You mean you may have said it and don't recall it or that you didn't say it?

A. I might have said I was through the Firth before, but I knew nothing about it, I don't recall that, he claimed he had been through the Firth, that he been doing duty out of Kirkwall and knew the Firth.

Q. If I were to tell you that the British officer made a statement saying among things that the captain of the Llama requested that we should wait for daylight and proceed through Westray Firth as he had gone that way the voyage before and knew the Firth, what would you say to that?

A. We have a statement here from Ricco saying that we held off and was going in through the night if it cleared, I never done nothing without he initiated it.

Q. When the British officer came on board did you say to him that you would conduct the navigation?

No, sirree—no, sir.

Q. Even though the British officer stated that you did tell him that, if the British officer stated that it is not correct?

A. It is not correct.

Q. I believe I understood you to say that when this highland was sighted the British officer told the man at the wheel to steer for that?

A. He pointed to the land and told him to steer.

Q. Do you recall his language?

A. No, I was probably 3 feet away.

Q. Did you hear him say to the man, steer for that highland?

A. I heard him speak to the man at the wheel and direct with his hands, steer for that.

Q. Did you hear what he said?

A. No.

Q. You don't know what he said?

A. No, but——

Q. You don't know what he said to the man at the wheel?

A. No, I didn't hear.

Q. You are not sure, you didn't hear?

A. He pointed out and said steer for that, somewhere to that point or words to that effect, he instructed the man to steer for a point of land and emphasized it by pointing to the land.

[fol. 94] Q. One more question, captain, at the time you were on the course S. 78 degrees E., that is the course you were on before you hove to?

A. S. 70.

Q. S. 70 E., that was magnetic?

A. Magnetic.

Q. What was your variation at that time, and place?

A. Variation, probably 19 W.

Q. So that your true course would be what?

A. Our true course would be to the right of that, not to the left of it, what was it, S. 70 E.?

Q. I would like to have you refresh your memory from the log?

A. S. 70 E. on the course, you mean the last course?

Q. Before you were boarded by the British cruiser?

A. We were hove to, laying to, I believe.

Q. I mean the course before you hove to?

A. S. 70 E., 7:30, the British officer boarded 8 o'clock, S. 70 E.

Q. Before you hove to?

A. S. 68, various.

Q. When did you heave to?

A. On the 28th, the 27th, 2:30 half speed.

Q. 3:35 P. M., October 27th, you hove to?

A. Yes.

Q. From then until after the British officer came aboard you didn't steer any particular course?

A. Various courses, laying to the wind.

Q. Before that time, 3:35 P. M. on October 27th your course was what?

A. The course was E. by S. one-half S.

Q. By the compass?

A. Yes; Standard compass.

Q. Any deviation on that heading?

A. No; pretty clear.

Q. Was that course by standard or magnetic?

A. Magnetic.

Q. And the variation was 19 W.?

A. 19 W.

Q. Your true course then would be about 88, wouldn't it, N. 88 degrees?

A. N. 88 E. true course.

Redirect examination by Mr. McGrann:

Q. To continue this course, prior to the boarding, I notice in the [fol. 95] logbook which has been marked libellant's Exhibit 2 for identification that at 7:10 P. M. on October 27th you changed course



to S. by E.; will you just take a look here, captain, and then on October 28 the last recorded course is S. 68 E., followed by various, up to 8 o'clock A. M. on the 29th, when you have S. 70 E., is that as you remember it?

A. Yes; we were laying as close to the wind as we could.

Q. What date was that?

A. 27th, strong easterly wind, strong gale here.

Mr. McGrann: Well, I object to the testimony as to the course prior to the boarding as being immaterial and ask counsel to point out how it is material.

Mr. Phillips: Anent that, proctor for respondent states that he considers this testimony as to the course to be highly material and expects to show that in proper time.

By Mr. Phillips:

Q. Just one question, with reference to the changes of course just referred to in the last question; were those changes of course necessitated by the existing weather?

A. Bad weather, before making—before the boarding, you mean?

Q. Yes.

A. By the weather.

Q. And your destination had nothing to do with those changes of course?

A. Nothing at all.

By Mr. McGrann:

Q. Well, had you received any course then up to the time you were boarded?

A. No; we was laying to, the morning we were boarded.

Q. The first course set was intended for what destination?

A. Towards Kirkwall.

Q. Would that have been the same course that you would have set if you had not intended going in the Westray Firth?

A. Yes; the same course.

[fol. 96] Q. Now, you have been cross examined about certain statements you made at Kirkwall or at Dundee, did you then know or had you worked out at that time just exactly the courses and distances run?

A. No; we had only worked out the probable position of the ship when she was ashore on the courses that was steered from the time of leaving Noup Head in.

Q. Did you consider that you stranded on a rock, captain?

A. I thought it was at that time, she is a little to the westward of the Skerries and at that time I thought it was an uncharted rock, something not on the chart, there is no place by the bearings that would have put her on the shoals.

Q. Did you have any conversation at the time of the stranding with the prize officer as to whether or not it was an uncharted rock or whether it was lying ashore off Skea Skerries?

A. I do not think after the stranding I had much conversation at all because we were all busy with our own affairs, the first boat that came along took the prize officer off the ship and I don't think I had any conversation with him after she was ashore.

Q. Do you recall now anything in the statements which you have made at Kirkwall or Dundee or elsewhere, immediately or within the several days following the stranding that are incorrect?

A. As far as I understand they all agree—agree with the main facts; I can't see where they differ—the main facts which was at the extension of the protest in Dundee should be the same as it is now, except I might have used I instead of we or he, that is the only difficulty, to the owners it was always I.

Q. Did you at any time accept responsibility for this stranding?

A. Never.

Q. Did you at any time, under oath or otherwise, make any admission that you were responsible for the navigation of the vessel?

A. No, sir; whenever any prize officer came aboard, I always put myself second to him.

Mr. Phillips: I move that the witness' answer be stricken from the record, as it is not responsive.

[fol. 97] Q. I am referring particularly to this occasion?

A. No, sir.

Q. Captain, you appreciate that counsel has attached significance to circumstances that have been developed by your services in the naval reserve and that you have expressed some regrets at this service and the outcome, and have now said that there was an episode which you were ashamed to deal with and I ask you in all solemnity and I state to you that you are under oath, and bearing that in mind, I want you to say whether or not the circumstances that you have described here about this navigation through Westray Firth are wholly true, or whether you had in any way misconstrued the situation knowingly?

A. Everything I have said regarding the Llama and all connected with her—her loss and so on—is the honest truth and can be upheld by the statements of all officers or all men, who will certainly verify my statements in everything I have said, and it is the absolute truth and no more; I am doing all this free, just to do what I think is right to the owners of the vessel, not for any benefit to myself nor any benefit to or trying to hurt the officer in charge at the time or anything like that, just because I think it is honest and just, no more nor no less. All during this period of the war I have been probably taken in about eight or nine different times by the Germans, the French and the English, and in all the cases where these troops come aboard the master and all hands were subordinate to them and they all thought themselves so—the idea was to get the ship through with as little trouble as you could so as to get her released from the port of examination; whatever they said went at all times. I was on the first vessel that was arrested in 1914 after war broke out, and the officers refused to obey the orders

of these armed guards and they simply took the thing in their own hands and done what they felt like doing.

Mr. Phillips: I move that the witness' answer be stricken out as immaterial.

[fol. 98] VALENTINE STUART COX, being duly sworn and examined as a witness for the respondent, testified as follows:

1 Q. State your age and present residence?

A. Hadlow Wood, Willesden, near Chester, 27.

2 Q. At the time of the outbreak of the war between Germany and England were you a member of the Royal Naval Reserve?

A. Yes.

3 Q. On what date did you enter on service?

A. In October, 1914.

[fol. 99] 4 Q. What rank?

A. Midshipman.

5 Q. And you held that rank until what time and to what grade were you advanced?

A. Till April, 1915, when I was advanced to sub-lieutenant.

6 Q. And you were commissioned at the rank of lieutenant when?

A. In August, 1916.

7 Q. Prior to October, 1914, had you any experience at sea?

A. Yes, I had been at sea since I was 16 years old.

8 Q. And at that time did you hold any certificates in the Merchant Service?

A. I held a certificate in the Merchant Service in January—February, rather, of 1913.

9 Q. What rank?

A. Second mate.

10 Q. Was it for unlimited tonnage and unlimited waters?

A. Unlimited tonnage, unlimited waters.

11 Q. State whether or not the second mate's British license is the lowest or what grade of license?

A. It is the lowest grade at which you can become a certified officer.

12 Q. At the time you joined the Navy in October, 1914, did you still hold the same certificate?

A. I still hold the same certificate.

13 Q. Please state what experience you had as an officer from the time you received your certificate until the time you entered the Navy in October, 1914?

A. I was an officer in the Royal Mail Steam Packet Company; I was first of all fifth, then fourth and then third. Third is the first watch-keeping officer. I was watch-keeping officer for close on a year—not quite.

14 Q. And, as a matter of information, just exactly in what trade had the vessels run?

A. When I was fourth and fifth officer we were running to the

West Indies and New York; and when I was third officer I was running down to Brazil.

15 —. What cruiser were you attached to after you entered the Naval Service?

A. I was attached to the "Virginia," a merchant cruiser.

[fol. 100] 16 Q. Exactly what service was the "Virginia" assigned to?

A. She was patrolling in Northern waters.

17 Q. State whether or not you were by the "Virginia" continuously from the time you joined her in the end of 1914 until after the time the "Llama" stranded?

A. I was continuously on her books, although at times I was away with these boarding parties.

18 Q. And during the period I have stated exactly what assignment did you have on board the "Virginia"? By "the period I have stated," I mean between December, 1914, when you joined her, and the time of the stranding of the "Llama"?

A. I was held for boarding duties and also as assistant navigator.

19 Q. Just explain in a little detail what you mean by boarding parties?

A. It means the boarding of any ships that come along and going in with them to Kirkwall, if necessary.

20 Q. Did you have a crew who accompanied you?

A. Yes.

21 Q. Of how many men did the crew consist?

A. I had four men.

22 Q. Was that the usual number in all cases of boarding vessels?

A. Yes.

23 Q. What rank were the men made up, the four that accompanied you on these boarding duties?

A. One was a first-class petty officer, one was a seaman, one was a stoker and one was a marine.

24 Q. Were these men armed?

A. Yes.

25 Q. State how each was armed?

A. The petty officer had a Service revolver and a cutlass; the seaman and stoker had revolvers and the marine had a rifle.

26 Q. What purpose was served by having these men armed?

A. The purpose for which they were armed was in case a German submarine had already boarded this vessel and the crew had been put on board—we were able to defend ourselves.

[fol. 101] Mr. Symmers: I object to this question and move that the answer be stricken out as incompetent.

Mr. Staley:

27 Q. At the time of counsel's interruption had you completed your answer, Lieutenant Cox?

A. Well, not quite.

28 Q. Just complete it.

(The stenographer read the last question and answer to the witness.)

A. And also for any other defense purposes that were necessary.

29 Q. State whether or not you were the lieutenant in charge of the guard which boarded the tanker "Llama" off Kirkwall in the latter part of October, 1915?

A. I was.

30 Q. Do you recall about when you boarded her and about the position of the ship approximately?

A. I do.

31 Q. Please state it?

A. Approximately 400 miles to the westward of the Orkney Islands.

32 —. And the date?

A. The date was the 28th October.

33 Q. The testimony of the master gives it as the 29th October, do you recall whether it was the 28th or 29th, to be exact?

A. I may be wrong; it is a long time ago.

34 Q. Who boarded the vessel with you?

A. My guard; my men whom I had with me.

35 Q. Consisting of how many?

A. Four.

36 Q. Did anybody else come aboard the "Llama" from the "Virginian"?

A. Nobody else.

37 Q. At the time you boarded her?

A. Nobody else.

38 Q. Now, lieutenant, just tell us exactly what took place when you came aboard—where you boarded, whom you saw, whom you spoke to and what was said?

A. I boarded her on the port side just below the bridge, and I was met on the deck when I boarded by an officer.

39 Q. Do you know which one it was?

A. I could not tell you.

[fol. 102] 40 Q. It is immaterial?

A. Then I was taken to the captain, who, to the best of my recollection, was on the bridge. We then went in the cabin and went over his papers; that is the ship's papers and manifest. I then went on the bridge and signaled my investigation to the cruiser, who gave me orders to proceed with the ship to Kirkwall.

41 Q. Were any directions given you then as to any course, or where you were to proceed to?

Mr. Symmers: I object to that and call for the orders. If it is to be more specifically given than so far indicated by the witness, let him tell what flags were displayed and the exact meaning of the flags.

A. It was sent by semaphore.

Mr. Staley:

42 Q. Did you read the semaphore yourself?

A. I personally read the semaphore myself.

43 Q. Tell us what the message was as near as you recollect it?

A. As near as I recollect it, it was: "Proceed to Kirkwall, keeping to the northward of Scule Skerry and North Rona." I think those two places were the other way round if I recall it to mind. "You are not to pass between the islands during the hours of darkness."

44 Q. Those are very well-known landmarks?

A. Yes.

45 Q. — were they with respect to the Orkney group?

A. Well, I think I am right in saying they are about 130 to 180 miles west of the Orkney Islands. I am not sure of my distances; it is some considerable way.

46 Q. Now, after the messages had been passed between the "Virginian" and yourself, what next followed?

A. I turned to the captain who was on the bridge and we went into the chart house, as near as I can remember; and I told him that the orders had come through as to the course to steer.

47 Q. Which was what?

A. It was to keep northward of these two islands.

[fol. 103] 48 Q. What islands?

A. Scule Skerry and North Rona, and I asked him if he would navigate the ship, to which he replied that he would. The captain then laid off the course as near as I can remember to Noup Head; and then he gave the order to—asked me, rather, if he could proceed; so I said, "Yes"; and he gave the order, "Full speed ahead," and set the course.

49 Q. Who laid off the course on the chart?

A. The captain.

50 Q. Who gave the directions for setting it?

A. The captain.

51 Q. State whether or not you took any part whatever in the navigation of the ship on that course?

Mr. Symmers: Objected to as a statement of a conclusion.

Mr. Staley:

52 Q. Answer the question.

A. I took no part in laying the course off; the only part I took was in looking after it afterwards to see that it complied with my orders from my captain.

53 Q. And that was what?

A. That was to pass to the northward of North Rona and Scule Skerry. The course did that and so I never mentioned it again.

54 Q. I want to ask you at this point when you came aboard what did the members of the crew do—the four men whom you brought with you?

A. They dispersed. When we came aboard they remained on the upper deck and one man went on the bridge; the others dispersed in

time to quarters that had been allotted to them by the captain of the ship.

55 Q. And during the period they were on board did the men stand regular sea watches?

A. Yes, they stood regular sea watches, one on the bridge all the time.

56 Q. For what purpose was that?

A. That was to keep a lookout for submarines or any untoward things that might happen detrimental to the ship or to us.

[fol. 104] 57 Q. By the way, lieutenant, were you and your men a prize crew?

Mr. Symmers: Objected to as a statement of a conclusion.

A. No, we were not a prize crew; we were merely what they termed an armed guard. We took no responsibility of the ship and had nothing to do with the navigation of it.

Mr. Symmers: I move that the last part of the answer be struck out as not responsive and as stating a conclusion.

Mr. Staley:

58 Q. Now, as I understand it, the master laid the course towards Noup Head?

A. Yes.

59 Q. And the ship was set on that course?

A. Yes.

60 Q. What happened after that so far as the navigation of the ship was concerned or the laying down of courses, or discussions, or what not?

A. The captain laid all courses down and he always informed me what he had done.

61 Q. During the time who was actually on the bridge as officer in charge?

A. The captain.

62 Q. He would not be there constantly?

A. Or one of the ship's officers.

63 Q. And who was at the wheel?

A. One of the ship's crew.

64 Q. Did your men attend the wheel at all at any time?

A. No, never.

65 Q. The course was set towards Noup Head, when was it changed about and what was the occasion for the change, if any?

A. We made no change of course until we sighted Noup Head to the best of my recollection; and then it was only to dodge around or what they call heave to until the morning.

[fol. 105] 66 Q. Do you know what day he sighted Noup Head, assuming that you boarded her on the 29th October as the master states?

A. Sighted Noup Head on the 30th.

67 Q. What time of day?



A. Well, on the afternoon.

68 Q. Did you go in past Noup Head that night or did you lay off during the night?

A. Oh no, we lay off well clear of the land.

69 Q. Was there any conversation between yourself and the master of the "Llama" as to the course you should take from Noup Head to Kirkwall?

A. Yes.

70 Q. When was that and state exactly what the conversation was?

A. That was during this evening; I cannot remember the time, but it was after we have hove to; the captain of the "Llama" came to me and said could he go through the Westray Firth.

Mr. Symmers: May I interrupt?

Mr. Staley: Interrupt now and make the objection so that we can continue.

Mr. Symmers: May I interrupt to ask whether in the cross examination of the master a proper foundation was laid for this testimony which you now seek to put in. I do not recall it.

Mr. Staley: The master testified as to certain conversations concerning the course to be followed.

Mr. Symmers: But was he specifically asked whether the conversation you now seek to bring out was had?

Mr. Staley: He referred to this conversation. Whether the exact words were asked the witness I do not know, but the captain undoubtedly has given his version of the conversation. This is as I recall it, of course. I read the testimony; I was not present at its taking.

Mr. Symmers: I will object to it on the ground that no proper foundation has been laid for it.

[fol. 106] A. I replied to him that I did not know the Westray Firth, having never been through it before. He said, "Oh, that is all right, I have been through; I went through my last trip." I said, "If you know the passage, captain, you can make it as far as the Government is concerned."

71 Q. Was there any discussion at that time about any other passage?

A. He mentioned that it was more preferable than the Fair Island passage.

72 Q. State whether or not you previously had used the Fair Island passage?

A. I personally have always used the Fair Island passage before, not knowing the coast too well.

73 Q. And do I understand you to say that prior to that time you had never been through the Westray Firth to Kirkwall?

A. No, I had never been through at that time.

74 Q. Have you ever taken a ship through subsequently?

A. No, I have never taken a ship through subsequently.

75 Q. Following the conversation, state whether or not any course was charted through the Westray Firth the following morning?

A. We charted a course—or rather the captain charted a course through the Westray Firth the following morning.

76 Q. Now, which is correct; did you or he or together?

A. No, the captain himself; he showed me the course afterwards.

77 Q. The captain of the "Llama" charted the course himself?

A. Yes.

78 Q. Was there any conversation had after the course was charted?

A. No.

79 Q. And can you give us about what time that was; the date of the month if possible and the hour as near as you can. I may say that the "Llama" stranded on the morning of October the 31st?

A. It was on the morning of October 31st, and it was some time [fol. 107] after 6, but certainly before 7 o'clock when we set the course for the Westray Firth.

80 Q. Who laid the course on the chart?

A. The captain.

81 Q. Who gave the directions as to the course to follow?

A. The captain.

82 Q. Did you hear him give the directions?

A. I cannot say that I did hear him give them.

83 Q. Did you give any directions at any time?

A. No, I gave no directions.

84 Q. At any time?

A. No.

85 Q. By the way, lieutenant, what time did you turn out on the morning of the 31st October?

A. I turned out at 6 o'clock in the morning.

86 Q. And what time had you your breakfast, about?

A. Some time just about 8.

87 Q. And what time did you come out from breakfast?

A. It must have been about half-past 8.

88 Q. Were you out practically after that time until after the time of the stranding—by "out" I mean on deck or in the chart room or the neighborhood of the bridge?

A. Yes, I was out the whole time.

89 Q. Please state in sequence just exactly what happened so far as you observed it after you came out from breakfast?

A. I came out from breakfast and I went straight out on the bridge; I had a look round and then went into the chart room where the captain was, and he showed me the position of the ship. I had a few words with him about what he was steering.

90 Q. Do you recall exactly what was said?

A. I cannot recall what was said, but he just gave me to understand that he was going through the Westray Firth.

Mr. Symmers: I object to this unless this witness can recall the language or approximately the language of the captain.

[fol. 108] A. And then I went out on the bridge again and saw breakers on the port bow.

91 Q. How much on the port bow?

A. I should say about a point or half a point.

92 Q. And how far distant about?

A. One to two miles, I should think.

93 Q. Go on.

A. I then went into the chart room again and told him what I had seen, and suggested that he had better take steps to clear it, which he immediately went out and did.

94 Q. Who was in charge of the bridge at the time?

A. One of the ship's officers.

95 Q. Was he standing right there on the bridge?

A. He was on the bridge at the time.

96 Q. Did you say anything to him?

A. Never spoke to him.

97 Q. Only spoke to the master?

A. Only spoke to the master.

98 Q. Did you ever speak to the man at the wheel?

A. Never.

99 Q. What happened after that?

A. The captain altered his course about 4 points, I think. Then very soon after that we struck.

100 Q. Where did you strike?

A. On the bow.

101 Q. Do you know what obstruction you struck?

A. Well, there is no doubt in my mind that we had gone on rock.

Mr. Symmers:

102 Q. Do you mean on the bow or the stem?

A. On the stem. Well, bow I should call it.

Mr. Symmers:

103 Q. The bow you mean?

A. Yes.

Mr. Symmers:

104 Q. The stem of the boat?

A. Yes, I do not mean bang up against the stem.

Mr. Symmers:

105 Q. You do not mean the port bow or the starboard bow; you mean the stem?

A. Yes, the forward part of the ship.

Mr. Staley:

106 Q. Forward near the stem?

A. Yes.

[fol. 109] 107 Q. Do you say the master was on the bridge at the time?

A. He was on the bridge at the time.

108 Q. Had he come out on the bridge before you struck?

A. Yes.

109 Q. How long?

A. Well, he came out to alter course; I could not say how long.

Mr. Staley: I produce Admiralty chart of the Orkney Islands numbered 2180; this is a British chart. I am only going to show it to the witness to ask him where the vessel stranded. For that purpose there is no difference.

Mr. Symmers: No difference between where our witnesses put it.

Mr. Staley: There is no dispute, candidly speaking, as to where she stranded; there is no doubt about that.

110 Q. May I have you indicate the point where you stranded? I will hand you my pen and ask you to mark it.

A. That is the position (indicating on the chart).

111 Q. Will you just draw a circle?

A. Somewhere in that circle (marking the chart).

112 Q. May I ask you to initial it "A" to the right. (The witness marked the chart.) What place is that?

A. That is the Skea Skerries.

113 Q. Is that a well-known charted obstruction there in the channel way of Westray Firth?

A. Yes, it is a very old obstruction.

114 Q. Approximately how wide is Westray Firth there?

A. About 4 miles I should think.

Mr. Symmers:

115 Q. I understand you to say it was a familiar obstruction?

A. It is an old obstruction; I mean to say it is not a new obstruction there.

Mr. Symmers:

116 Q. Well, no.

A. It is not familiar to me personally.

Mr. Symmers:

117 Q. It is well known to all navigators?

A. Yes, all navigators.

[fol. 110] Mr. Staley:

118 Q. So that I may have it definitely on the record who laid down all the courses after you had passed North Rona and the Scule Skerries?

A. The captain.

119 Q. You mean the captain of the "Llama"?

A. Yes, the captain of the "Llama."

120 Q. Who actually plotted them on the chart?

A. The captain of the "Llama."

121 Q. Who gave directions, so far as you know, of the courses to be pursued by the officer on the bridge or the quartermaster?

A. The captain of the "Llama."

122 Q. State whether or not at any time you gave any directions of any kind whatever either to the officer in charge of the bridge or the quartermaster on the "Llama"?

A. At no time did I ever give any orders to the crew of the "Llama."

123 Q. Or to any of the officers in charge of the bridge?

A. Yes.

124 Q. Is that correct?

A. That is correct.

125 Q. At the time you struck was there any doubt as to your striking a rock or obstruction?

A. Not in my mind.

126 Q. Was there any indication whatever that you had struck a mine?

A. I never saw any; there was no indication to me that we had struck a mine.

127 Q. Just exactly, what was the effect to the ship when you did strike?

A. Well, the ship stopped and then there was a grinding; at least, I should say there was a bang and a grinding and then the ship brought up all standing.

128 Q. What did you do immediately after the ship struck?

A. I sent a wireless message into Kirkwall to the naval officer there, informing him that the "Llama" was aground at Skea Skerry and requested assistance immediately.

129 Q. And subsequently the "Llama" was lost, was she?

A. So I believe; I was not there.

[fol. 111] 130 Q. You were not there when she was lost?

A. No.

131 Q. How long did you remain by the vessel after she stranded?

A. I remained till about 5 o'clock on the day she stranded in the afternoon; then I went to Kirkwall in the tug with the rest of the crew and reported myself to the naval officer there who sent me into Scapa Flow to the depot ship, there awaiting transmission to my own ship.

132 Q. I forgot to ask you the weather conditions that morning; will you please state exactly what the weather conditions were?

A. Well, there was a slight haze, but not enough to obstruct navigation. The sea was calm and there was a light breeze, of what force I cannot say.

133 Q. Is it of any consequence?

A. Nothing to speak of.

134 Q. How far could you see?

A. You could see 6 or 7 miles I should think.

135 Q. Did you have any trouble seeing land?

A. No, no trouble at all.

136 Q. How far off were you, say, when you got under way after 6 that morning?

A. I should think the nearest land was about 8 or 9 miles away at the outside.

137 Q. The master of the "Llama" has been examined in this case (I am now referring to page 45 of the testimony), and was asked this question: "You said to him how are you going?" which was answered: "I said to him which way are you going, he went into the chart room, the chart was laid out, I got out the chart that he wanted, I says will we go through the Fair Island passage or through the Westray Firth; he says we will go through the Westray." State whether or not you had such a conversation with the master?

A. I had no such conversation.

138 Q. What is the exact fact?

A. I am taking it this was at the time I boarded her?

139 Q. Yes.

A. The only conversation I had with him was that we were to proceed north of North Rona and Scule Skerries, and not pass [fol. 112] through the islands in darkness. We made no mention at the time of which passage we would take.

140 Q. Did such a conversation take place with you at any time?

A. No.

141 Q. What was the exact conversation which passed between you as to the course the ship should take to go to Kirkwall?

A. Is this from when I boarded?

142 Q. At any time?

A. The only time was when I boarded or rather when I had my signal from the cruiser that we were to pass, as I say, north of North Rona and Scule Skerries and we were not to pass between the islands during the hours of darkness. Later the captain approached me and asked my permission to go through the Westray Firth. I told him at the time that I had never been through before and did not know the passage; but he said that the voyage before he had been through the Westray Firth and knew the way; so I gave my consent to going through that passage.

143 Q. Did he ever say to you, "We will go through the Fair Island passage"?

A. No, at no time.

144 Q. Did he ever suggest to you going through the Fair Island passage?

A. No.

145 Q. By the way, lieutenant, from Noup Head to Kirkwall, what is the difference in the distance by the route through the Westray Firth and the route through the Fair Island passage?

A. Well, I am not sure of the actual mileage, but I should think you gain about 50 miles by going through the Westray Firth.

146 Q. You gain 50 miles?

A. Yes.

147 Q. The captain further testified that you said to him that you knew the Westray Firth, knew the passage well. State whether that is correct? I now refer to his testimony on page 49.

A. That is not correct because I have never been through the passage before.

148 Q. And did you so tell him?

A. I told him.

[fol. 113] 149 Q. State whether or not you had anything to do with the laying down of the courses which the captain laid down through Westray Firth?

A. I had nothing to do with any of the courses.

150 Q. The captain says—I am now referring to page 50 of the testimony—that upon leaving Noup Head about 7:45 in the morning you said—the question was, “Did he say to you—meaning did you say to the captain—take this course S.  $\frac{1}{2}$  W. or did you say to him? (A.) He says we will head S.  $\frac{1}{2}$  W.”

A. I never said that.

151 Q. Did you ever give any compass courses at all to the captain at any time?

A. No, I never gave any compass course or standard course or magnetic course at any time.

152 Q. The captain throughout his testimony refers a number of times to you giving directions for particular courses; state whether or not at any time you ever gave any directions to the captain as to what course he was to follow?

A. Never at any time did I state to him any course in degrees which he was to steer.

153 Q. Or direction?

A. Or direction.

154 Q. State whether at any time you gave him any suggestions as to when he should make a change in course, except at the time when you saw the breakers ahead?

A. Never.

155 Q. At pages 50 and 51, the last question on page 50 and the early questions on page 51, the captain was asked and answered as follows:

“Q. Can you recall approximately how long he remained on that course, what change you made and the circumstances, if so please do so?

A. It was about 7:45 when we headed in on the course  $8\frac{1}{2}$  W., about 8:10 we had the lighthouse abeam and we continued on that course until about 8:40 when he sighted”—referring to you—“he seen land on the port side which he thought was Fersness, he says there is Fersness, we will head for that. I said all right, he went to the wheelsman and said there is that point of land, steer for that. [fol. 114] all right we headed for that land about 8:40, we headed on that until about 8:50, then seen the two pieces of land, two small islands open up on the port side and he said there is the Holms, then altered the course, says we will head for that, then he said S. by E., we made for these two pieces of land, she was heading S. by E.  $\frac{3}{4}$  E.”

State whether or not the actual facts are as the master has testified to there?



A. They most certainly are not.

156 Q. Did you know where Fersness was?

A. No, I never heard of the place.

157 Q. You had never been through that part before?

A. Never.

158 Q. Specifically did you give directions to the wheelsman to steer for that point?

A. No.

159 Q. At any time did you give any directions to the wheelsman?

A. No.

160 Q. Now, continuing with the master's examination on page 51:

"Now to go back, you said that the officer made out some land which he designated as Fersness, did he express this to you?

A. He expressed it loudly to everybody so that they could hear."

I understand you to say that you made no reference to Fersness at any time; is that correct?

A. No, that is correct.

161 Q. By the way, lieutenant, do you know whether the captain took off the charts which he used there in the chart house?

A. I could not say.

162 Q. They were there when you left?

A. They were then when I was last on the bridge.

163 Q. State whether or not at any time during the passage through Westray Firth at the time of the stranding, that is after you left Noup Head, you pointed out or designated any point of land to anybody on board the ship?

A. No.

164 Q. The captain again testified on page 67 in answer to this question:

"Did you have any further conversation than that which you have already testified to in respect to a choice between going through [fol. 115] Westray Firth and through the Fair Island passage, with the prize officer?

A. No, only I asked what was the reason he was going through Westray Firth, I said—the general passage was through the Fair Island passage, I said, what is the matter with the Fair Island passage; well, he says, there is submarines operating around there and it is better to get in as quick as we can, or words to that effect, general conversation."

State whether or not any conversation of that kind ever took place?

A. No, no conversation of that kind ever took place.

165 Q. Did you ever tell him that the submarines were operating round the Fair Island passage?

A. No, never.

166 Q. Was it a fact, were the submarines operating round the Fair Island passage at that time?

A. Not to my knowledge, but they were everywhere. We were

never allowed to talk anything about submarines or any other vessel of war whether enemy or our own with any merchant captains.

Mr. Symmers: I move that the last sentence of the answer be stricken out as not responsive.

Mr. Staley: Then at page 84 the captain says you told him that you had been through the Firth before. State whether or not you said anything like that to the master?

A. The Westray Firth I took that to be?

167 Q. The Westray Firth I mean.

A. No, I never stated anything about being through there before, because I had never been.

168 Q. Did you or did you not say that you had been through the Westray Firth before?

A. No.

169 Q. On page 8 of the testimony of Jensen, the third officer, who stood the 8 to 12 watch on the bridge of the "Llama" at the time of the stranding, testified as follows: "While the ship was being steadied on this course"—referring to a course she was being steadied on after you came on the bridge after your breakfast—

A. Yes.

[fol. 116] 170 Q. —"the prize officer pointed out to the man at the wheel a headland which he should steer for. When the ship came on a course of S. E. by Standard compass this course coincided with the information that the prize officer had given the wheelsman concerning the course the ship was to be steadied on." State whether or not you pointed out or gave any indication to the man at the wheel at any time of any course that he should take?

A. I never pointed out or gave any indication of courses to be steered by the man at the wheel.

171 Q. With reference to what occurred on the bridge just before the ship stranded Jensen testified as follows (page 12): "After I had steadied on the S. by E. three-quarters E. course, I went on the bridge again from the top of the chart house where the Standard compass was located, I kept a sharp lookout. Between the time of change of course and stranding I saw breakers on the port bow close aboard. The fact of seeing these breakers naturally aroused my curiosity and also made me entertain a certain amount of doubt if we would clear them or not. I notified the prize officer in person about these breakers that seemed to me to be rather close on the course we were on. I asked him his opinion about being on a safe course to pass these breakers. He assured me we were. Because of the fact that my duty kept me on the bridge all the time I had no access to the chart and presuming that the prize officer was naturally acquainted with the waters in this locality I requested him to inform me of the name of this reef. He said he was not sure of the name." State whether or not the conversation between Jensen and yourself took place as the third officer has testified?

A. I never held a conversation with him at all.

172 Q. At any time?

A. At any time.

173 Q. Did he report to you these breakers ahead?

A. No, I saw them myself and rushed into the chart room to the captain.

[fol. 117] 174 Q. But did he report that he saw them?

A. No.

175 Q. By the way, lieutenant, who made any observations that were made?

A. The ship's officers made them if they were made; I took none; I had no sextant.

176 Q. Were any observations of positions taken that you personally saw the officers take?

A. I am not sure of this; but I think the first night I was on board one of the officers took an observation and handed it to the captain.

177 Q. You had nothing whatever to do with it?

A. I had nothing to do with it. I may be wrong in what I say about the observation being taken, but I seem to remember it.

Cross-examination by Mr. Symmers:

178 Q. Lieutenant, how many other vessels, approximately, had you boarded in your capacity as boarding officer prior to boarding the "Llama"?

A. I should think 15 or 20.

179 Q. Have you ever boarded any vessel in the immediate vicinity of the place where you boarded the "Llama"?

A. Yes, I should think I have.

180 Q. Do you recall any particular vessel you boarded there?

A. No, I cannot recall any of them now by name.

181 Q. Could you say positively that you ever had boarded any other vessel within 50 miles of the particular place where you boarded the "Llama"?

A. Well, I should not like to say positively, because I have been moved about so much, although it was the same courses in.

182 Q. Never mind that. You would not undertake to swear that you had boarded any vessel within 50 miles of the place where this particular vessel was boarded?

A. No, I should not like to.

183 Q. Were you armed when you boarded the "Llama"?

A. Yes.

[fol. 118] 184 Q. That was pursuant to custom?

A. That is the custom.

185 Q. And pursuant to your instructions?

A. My instructions from the Government.

186 Q. Now when you boarded any vessel for the purpose of taking her in for examination you realized, I take it, that you were boarding a vessel that might possibly after examination at Kirkwall be the subject of prize court proceedings?

A. Yes.

187 Q. And that she might possibly be condemned as good prize?

A. Yes.

188 Q. So that you realized when you boarded any such vessel

that you were representing the interests of your Government, whatever they might prove to be, in that particular vessel?

A. Yes.

189 Q. I do not know the value of the "Llama"; but, assuming she was worth, say, half a million dollars, or a million dollars, you would then realize that on boarding the "Llama" you were representing the interests of your Government, whatever they might be, in a vessel of considerable value?

Mr. Staley: This is objected to; the man was boarding under naval orders.

A. To the extent that I am to see that she gets to Kirkwall.

Mr. Symmers: Yes, you understand it was part of your duty to see that she got there?

A. Yes.

190 Q. And it was part of your duty in answering the interests of your Government to see that she got there, if possible, by the safest route?

A. By the safest route, yes.

191 Q. And in view of the presence of submarines in all quarters, especially where they were not expected to be, you recognized the [fol. 119] importance of getting every vessel that you boarded in as quickly as possible?

Mr. Staley: Is that prior to this time or subsequent to this time?

Mr. Symmers: Both prior and subsequent and at this time?

A. Yes, to get them in with all despatch.

192 Q. You did not regard yourself as merely a passenger on board this ship, did you?

A. I did as far as the navigation of the ship went.

193 Q. Oh, of course; but suppose a captain had suggested a course that did not meet with your approval, you assume yourself to have power to correct it?

A. Yes.

194 Q. That was one of the purposes of being armed, was not it; to compel the masters to do whatever you thought fit to make them do?

A. Only to a certain extent. If his course would take him to Kirkwall he could take that course, provided it was not against direct orders from the Government.

195 Q. Suppose upon being boarded he had said: "I do not want to go into Kirkwall with you; I am going to turn back and go to where I came from," what would you have done?

A. I should have informed the cruiser.

196 Q. And what would have been the custom of the cruiser?

A. That I cannot tell you.

197 Q. But, to the extent of your power, you had instructions to take him into Kirkwall, and to the extent of your power you would have obeyed those instructions?

A. Yes.

198 Q. And you had four or five armed men to assist you in that?

A. Yes.

199 Q. Where any of the crew or any of the officers of the "Llama" armed, as far as you had any information?

A. Not as far as I know.

[fol. 120] 200 Q. They complied with your requests or orders or direction, or whatever you choose to call them?

A. Yes.

201 Q. They gave you no opposition?

A. They gave me no opposition, no.

202 Q. You told the master you had these orders to take him into Kirkwall?

A. I said he had to proceed to Kirkwall.

Mr. Staley: I object to these questions; the master was already bound for Kirkwall and his bills of lading so read.

Mr. Symmers: I understand you to testify that you repeated to the master of the "Llama" the instructions you had received from the "Virginian"?

A. Yes.

203 Q. And did you repeat that to him accurately?

A. Yes.

204 Q. Just as received?

A. Just as I received them myself.

205 Q. And those instructions were, again, what?

A. To pass to the northward of North Rona and Scule Skerry and not to pass between the islands during the hours of darkness.

206 Q. Was there nothing with reference to taking the vessel into Kirkwall?

A. That was already received.

207 Q. Well, what was that?

A. I had signalled over that the ship's papers stated she was bound for Copenhagen via Kirkwall, and all I received back was this signal about keeping north of Scule Skerry and North Rona, and not to pass through the islands during the hours of darkness; and then they hoisted the signal, "Proceed on your voyage."

208 Q. Now was it "Proceed on your voyage," or was it "Proceed to Kirkwall"?

A. No; it was "Proceed." It was a signal that we had for proceeding.

209 Q. Now, do you wish to correct the testimony that you gave on [fol. 121] your direct examination to the effect that the semaphone instructions to you were to proceed with the ship to Kirkwall, keeping to northward of Scule Skerry and North Rona?

A. Well, as near as I remember: I mean to say it is five years ago this occurred. Certainly my orders were that I was to keep north of Scule Skerry and not to pass through the islands during the hours of darkness. Whether they actually made the signal to Kirkwall or just "Proceed," I cannot say.

210 Q. Now, lieutenant, those were official instructions you were receiving?

A. Yes.

211 Q. On matters which I take it would make some impression upon your mind. You now tell us that because of the lapse of time you are unable to give what those instructions were?

Mr. Staley: This is objected to; manifestly a matter of this sort is immaterial, irrelevant and incompetent.

A. I have taken plenty of ships and I got these different signals every time, and I am afraid one did not impress itself any more on my mind than another; these things happened over five years ago; I have had a good deal in my mind since.

Mr. Symmers:

212 Q. Did you pay any attention to signals you got or did you act upon your general understanding that all vessels boarded by you were to be taken to Kirkwall?

A. No; I took signals.

213 Q. But you cannot remember what the signal was specifically in respect of this one vessel?

A. I can remember quite plainly about North Rona and Scule Skerry, because it was the only time that I had those orders.

214 Q. You certainly did not gather—

Mr. Staley: I ask that the witness be permitted to finish his answer.

Mr. Symmers: I beg his pardon if he had not finished.

[fol. 122] A. And not to pass between the islands during the hours of darkness.

215 Q. You certainly did not gather the impression from your instructions that provided you passed between these places you have mentioned you were to go to Copenhagen?

A. No; certainly not.

216 Q. Did you gather the impression you were to take the vessel into Kirkwall?

A. Certainly, yes.

217 Q. You have two or three times mentioned the fact that five years has elapsed since this occurrence?

A. Yes.

218 Q. As explanatory of the uncertainty of your recollections in certain particulars. Your memory may be affected in other respects without your knowledge in which you have testified more positively, may not it?

Mr. Staley: The form of this question is objectionable; the witness has not shown any lapse of memory except with regard to very minor matters.

A. In what respect do you mean?

(The stenographer read the question to the witness.)

A. No; I do not think it is.

Mr. Symmers:

219 Q. Have you talked this matter over lately with anybody—the question of the character of testimony you would give?

A. I have seen a testimony I made.

220 Q. And have you discussed the matter with anybody?

A. No; not outside.

221 Q. I mean the testimony you expected to give here today?

A. No; not at all.

222 Q. Not with anybody—counsel or anybody else?

A. I do not quite follow you.

223 Q. You say you have talked with nobody about it—counsel or anybody else—about the testimony you would give here today?

A. No.

[fol. 123] 224 Q. Are you as positive about that as you are with respect to other statements you have made?

A. Yes.

225 Q. Now, do you realize as a boarding officer that if the United States Government be held liable in this suit in which your testimony is now being given, the United States Government would probably advance against your government, the British Government, a claim for indemnity?

Mr. Staley: This is objected to as manifestly incompetent and improper.

A. It is nothing to do with me.

Mr. Symmers:

226 Q. I did not ask whether it was anything to do with you; I asked you whether you realized that?

A. Well, I had not realized it; I had not thought about it.

227 Q. You never gave that any consideration?

A. No.

228 Q. Did you make any written report at the time to your superior officer concerning this stranding?

A. I made a report to my government.

229 Q. And did you obtain a copy?

A. I had a copy until the time when I left the service.

Mr. Staley: The government has a copy furnished by the British Admiralty which will be tendered to counsel, if they desire to see it; it is before me now.

Mr. Symmers:

230 Q. What did you do with the copy you obtained?

A. My copy I tore up when I left the service; I thought it was all finished with.

231 Q. Have you seen the original letter?

A. I have seen a copy of my original letter to my government since.



232 Q. And that is the document you have deposed to as having consulted?

A. Yes.

Mr. Staley: Counsel will add that the report which the lieutenant made and which he referred to is dated November 16th, 1915.

[fol. 124] Mr. Symmers:

233 Q. Do I understand you to say the captain of the "Llama" had posted your men or assigned them their positions after you and your men had boarded the "Llama"?

A. Not for watch keeping; he assigned them their quarters for living in.

234 Q. Those men were under your command, were they not?

A. They were under my command.

235 Q. Did you derogate your powers to the captain of the "Llama"?

Mr. Staley: That is objected to as to form; the facts do not warrant the question being put in that form.

Mr. Symmers:

236 Q. What had the captain of the "Llama" to do with posting your men?

A. I say he gave them their sleeping billets—assigned them their quarters.

237 Q. Were you present with the captain in the chart room when he was laying down these courses?

A. Not the first course.

238 Q. That is the course to the north of the Scule Skerry?

A. Yes.

239 Q. You told him about that course?

A. I told him what we had got to do.

240 Q. And he showed you the course afterwards?

A. Yes; I went out to see our ship in case there were any more signals coming there and he showed me the course afterwards.

241 Q. And you approved it?

A. Yes.

242 Q. So that when he was laying down that course you were with him in his chart room?

A. Sometimes I was with him and sometimes I was out on the bridge.

243 Q. At all times before acting upon any course which he had laid down tentatively he would tell you what he had done?

A. He had sometimes altered his course first and told me afterwards.

[fol. 125] 244 Q. Told you immediately afterwards?

A. Yes, within a short time afterwards.

245 Q. Before the course had been departed from materially?

A. Yes.

246 Q. It is the fact, is not it, that the captain always reported to you what he was doing until the time of the stranding?

A. Yes.

247 Q. Did you at any time suggest changes?

A. No, only the one time when I sighted this wash ahead.

248 Q. You had told him what your general instructions were?

A. I told him what the general instructions were.

249 Q. And he laid down these courses?

A. Yes.

250 Q. Showed them to you and you approved them?

A. Yes.

251 Q. And then he carried them out?

A. Yes.

252 Q. After 5 years can you say that you remember the exact language the captain used when he asked you some question with reference to going through the Westray Firth, as you testify?

A. I did not depose to that as the exact language which he used, but that was the idea of what he said.

253 Q. That is what you now understand the idea to have been?

A. Well, yes.

254 Q. Would you swear that he did use the word "should" he go through the Westray Firth, rather than "could" he go through the Westray Firth?

A. Well, he asked me if he could go through the Westray Firth.

255 Q. Well, you would not swear at this time, 5 years afterwards that he did not say, "Shall we go," or "should we go" through the Westray Firth?

A. No, I suppose I would not like to say that—which word he used.

256 Q. Now you state that the captain advanced the idea to you that it was preferable to take the Westray Firth rather than the Fair Island Passage?

A. Yes.

[fol. 126] Mr. Staley: I object to the form of the question; the testimony is not that the captain suggested it.

Mr. Symmers:

257 Q. I do not want to mislead you, Mr. Witness; my notes say, "He said"—meaning the captain said—"it was preferable to the Fair Island Passage"—referring to the Westray Firth passage.

A. He said he preferred to go that passage.

258 Q. Your language was as I have it noted: It was preferable to the Fair Island Passage.

A. Well, that is correct.

259 Q. Now did he advance any reasons why in his judgment it was preferable to the Fair Island Passage?

A. Not that I remember; he may have done at the time.

260 Q. In spite of the fact that you had always before hand gone by the Fair Island Passage, you did not ask him why in his judgment the Westray Passage was preferable?

A. No, because I know that certain boarding officers use the other

passage frequently. I am referring to the Westray Passage when I say the other passage.

261 Q. Do I understand you to say that to your knowledge other boarding officers sometimes used the Firth passage?

A. Yes.

262 Q. And your only reason, it being a shorter way, for not wishing to use it or in not preferring it on that occasion was your alleged unfamiliarity with it?

Mr. Staley: The form of this question is objected to; the witness has not expressed it in that way, but only as a selection made by the master of the "Llama." I think it is unfair to present the question in the form in which you are presenting it.

Mr. Symmers: Perhaps you misunderstood the question.

(The stenographer read the question.)

Mr. Staley: I will leave the record to stand.

[fol. 127] Mr. Symmers: I think in cross examination I have a right to ask that.

Mr. Staley: I will make an objection to it.

(The stenographer repeated the question to the witness.)

A. That is quite correct.

Mr. Symmers:

263 Q. After you came on deck after finishing your breakfast about half-past 8 on the morning of the 31st, you say the captain and you went into the chart room and the captain showed you the position of the ship?

A. Yes.

264 Q. And that you had a few words with him which you cannot remember?

A. No, they were just conversation.

265 Q. How long was that before the actual stranding?

A. I suppose it must have been just 20 minutes or half an hour.

266 Q. After the stranding how long was it before you sent word to the naval officer at Kirkwall?

A. Well, as quick as we could get it through.

267 Q. Immediately?

A. As soon as we knew what we had actually struck and could write out the message and give it to the wireless operator.

268 Q. You say it was a reasonably fair day: you could see where you were?

A. Oh, yes.

269 Q. Did not you know what you had struck immediately you struck it?

A. Well, we had an idea, but then you must take cross-bearings.

270 Q. Please do not use the word "we"; I am speaking with reference to what you yourself knew?

A. Well, I did not know at the time what we actually had struck.

271 Q. Did you know that you were on the Skea Skerries?

A. No.

272 Q. What did you do to find out where you were before you reported to the naval officer at Kirkwall?

A. The captain sent one of his officers to take cross-bearings.

[fol. 128] 273 Q. Did you chart those?

A. The captain charted them.

274 Q. Well, you say the captain did; were you with him?

A. Yes.

275 Q. In the chart room?

A. In the chart room.

276 Q. And you agreed that you were on Skea Skerries?

A. Well, we did not wait to agree; I mean I took it that we were.

277 Q. You did not differ from him?

A. No, I did not differ from him.

278 Q. And, acting on your judgment, you sent advices to that effect to Kirkwall and requested assistance?

A. Yes.

279 Q. And that you did of your own motion?

A. It was at the captain's motion, too; he asked me what was the best thing to do, and I said, "We will send a wireless into Kirkwall."

280 Q. And you did?

A. And we did.

281 Q. The captain did not act even after the stranding without consulting you, did he?

Mr. Staley: This form of question is objected to; the facts do not warrant suggestions as made in this form.

Mr. Symmers: The question is withdrawn.

282 Q. Do you know whether the Westray Firth was mined at the time?

A. I can only give you my knowledge of the thing, and my knowledge is that no mine could be buoyed in Westray Firth.

283 Q. So far as you know?

A. So far as I know.

284 Q. It was not mined?

A. No, it was not mined.

Re-examined by Mr. Staley:

285 Q. When did you leave the Government service?

A. In January, after the Armistice.

286 Q. 1919?

A. 1919, that is right.

[fol. 129] 287 Q. And have you been in Government service since?

A. No.

288 Q. Are you with the Government now?

A. No.

289 Q. Where are you located now?

A. I am a cotton merchant.

290 Q. Where?

A. In Liverpool.

291 Q. And you came over today at my request to give your testimony in this case?

A. Yes.

292 Q. You say you have refreshed your recollection from the report which was submitted by you at the time?

A. Yes.

293 Q. For purposes of identification only I asked you to identify the report and hand it to the stenographer to be marked (handing report to the witness).

A. Yes; that is the one.

Mr. Symmers: It is to be marked for identification?

Mr. Staley: For identification only.

(Same marked by the stenographer "Government Exhibit No. 1.")

DAVID CUNNINGHAM, being duly sworn and examined as a witness for respondent, testifies as follows:

294 Q. State your age and present residence?

A. 42; Mounthilly, North Queen's Ferry, Fifeshire.

295 Q. How long prior to the war had you been in the British navy?

A. Five years.

296 Q. In what capacity?

A. Well, I was in the ship all the time, you know.

297 Q. What as—what did you do?

A. Stoker.

298 Q. And when did you join the British cruiser "Virginia"?

A. I joined her on the 3rd of April, 1915, at Glasgow.

299 Q. To what duties were you assigned aboard the "Virginia"?

A. Doing odd jobs and guardsman.

[fol. 130] 300 Q. Were you one of the guards that boarded the "Llama" off the Orkney Islands in October, 1915?

A. Yes.

301 Q. Who was in charge of you?

A. Lieutenant Cox.

302 Q. He has been here in the office today?

A. Yes.

303 Q. How many men?

A. There were three men and the petty officer.

304 Q. Did you carry any arms that day?

A. Yes; side arms.

305 Q. And why was that?

A. Well, for protection; armed guards always carry side arms.

306 Q. State whether or not you stood regular watches while you were aboard the ship?

A. We did four hours each.

307 Q. Do you remember the morning the "Llama" stranded?

A. Yes.

308 Q. What was your watch?

A. 8 to 12.

309 Q. And you were on watch then, at the time of the stranding?

A. Yes.

310 Q. What was the weather condition that morning?

A. Oh, the weather was very clear.

311 Q. How was the sea?

A. The sea was very clear, very calm.

312 Q. How was the wind?

A. We had no wind at all.

313 Q. Had you gone with Lieutenant Cox in other circumstances as a member of a guard?

A. No.

314 Q. This was your first, was it?

A. Yes; first one.

315 Q. You came on watch at 8 o'clock?

A. Yes.

316 Q. Now, were you proceeding along?

A. Yes.

317 Q. Did you notice anything unusual at any time before you struck?

A. No; nothing at all.

318 Q. Did you make any report to anybody of anything ahead as you were moving along?

A. Yes; when I saw the rocks I reported to the officer.

319 Q. Just exactly what did you see? Describe what you saw.

A. I seen the sea breaking over the rocks.

[fol. 131] 320 Q. You could see the rocks yourself?

A. No; you could not see the rocks; you could only see the water.

321 Q. You could only see the breakers?

A. The breakers, that is all.

322 Q. Where were you at the time you saw that?

A. On the bridge on the port side.

323 Q. And what did you do then?

A. Reported to the officer.

324 Q. Who was the officer?

A. One of the ship's men.

325 Q. The man in charge of the bridge?

A. Yes.

326 Q. How far was the ship off, do you think, at the time you made this report?

A. It was between two and three miles.

327 Q. In what direction off of what bow was it?

A. Well, it was nearer the port bow, if it was anything.

328 Q. You, of course, felt the jar when you struck?

A. Yes; we did not feel land till we struck.

329 Q. Could you tell whether you struck a rock or a mine, without any trouble?

A. Yes.

330 —. What was it you struck?

A. A rock.

331 Q. And how did you know you struck a rock?

A. Well, we heard the sound, you see; we could tell by the sound.

332 Q. By the sound of the striking?

A. Yes.

333 Q. State whether or not at any time you heard Lieutenant Cox give any orders or directions or commands to the ship's officers or crew?

A. No.

334 Q. Who gave such orders as you saw on the bridge given?

A. Lieutenant Cox gave that to the armed guard; he always does give that to the armed guard.

335 Q. That is, Lieutenant Cox gives you the orders?

A. Our orders, but nobody else.

336 Q. Now I am asking did you at any time hear Lieutenant Cox give any orders or directions to the crew of the "Llama" or to the officer in charge of the "Llama"?

A. No.

337 Q. At any time?

A. No.

[fol. 132] Mr. Symmers: I have nothing to ask.

ERNEST EDWARD KNIGHT, being duly sworn and examined as a witness for respondent, testifies as follows:

338 Q. State your age and occupation?

A. Age 39, employed as a rigger.

339 Q. Prior to the war you had been in the Navy?

A. Yes.

340 Q. For what period?

A. For 12 years.

341 Q. Between what years?

A. 1898 I joined the service and was discharged in 6/2/12.

342 Q. Did you enlist again on the outbreak of the war?

A. Yes, called up by the Admiralty.

343 Q. When did you re-enlist?

A. On the 2nd of August, 1914.

344 Q. And when did you join the cruiser "Virginian"?

A. December, 1914.

345 Q. You were assigned to what class of duty on board the "Virginian"?

A. On joining the ship I was assigned as a boatswain's mate.

346 Q. And what about the time of the stranding of the "Llama" you were employed in what class of service?

A. Boatswain's mate.

347 Q. Were you a member of the guard which went aboard the "Llama" with Lieutenant Cox? A. Yes.



348 Q. What watch did you stand?

A. I took the 4 to 8 watch, the two dog watches.

349 Q. You had left the watch at 8 o'clock on the morning of the stranding?

A. No, I had the 4 to 8 in the morning, the two dog watches.

350 Q. Where were you in the morning?

A. In the morning I was down below.

351 Q. Had you come up on deck before the stranding?

A. Oh, yes, I was invariably on deck.

[fol. 133] 352 Q. And what was the first you knew about it?

A. The first I knew of the ship stranding was when she hit the bottom.

353 Q. Could you tell what she hit?

A. Certainly not, only just the jumping of the ship when she struck.

354 Q. Could you tell whether it was a rock or a mine?

A. You could tell it was a rock by the grinding of her plates.

355 Q. What part of the ship were you on?

356 Q. I was about amidship, port side.

357 Q. Were you looking ahead paying attention to things?

A. No, I was just stopped there having a breather; I was paying no attention.

358 Q. What were the weather conditions that morning at the time of the stranding?

A. Well, the weather at the time of stranding was smooth sea, light breeze, clear atmosphere.

Mr. Symmers: No cross examination.

ERNEST BROWN, being duly sworn and examined as a witness for the respondent, testifies as follows:

359 Q. State your age and residence please?

A. 24; 3 Bernard street, Leith.

360 Q. When did you join the cruiser "Virginian"?

A. 9th of December.

361 Q. What year?

A. 1914.

362 Q. And did you continue on her until last October and the early part of November, 1915?

A. The last of October, 1915?

363 Q. Yes.

A. Yes, I was aboard of her then.

364 Q. Were you a member of the guard which went aboard the "Llama"?

A. Yes.

365 Q. What rank were you?

A. Able seaman.

366 Q. And what watch did you stand on board the "Llama"?

A. Middle watch, 12 to 4.

[fol. 134] 367 Q. Where were you at the time of the stranding of the "Llama"?

A. On the bridge. At the time of the stranding?

368 Q. Yes.

A. On the forward well deck.

369 Q. And had you been there very long?

A. I cannot say.

370 Q. What was the first you knew of any difficulty?

A. Well, I just felt the shake of the ship.

371 Q. Could you see forward of you from the well deck?

A. No, I could not.

372 Q. Why?

A. You could not see above the forecastle if you stand on the well deck.

373 Q. You were just out getting air?

A. Yes.

374 Q. What were the weather conditions that day?

A. Very fine weather.

Mr. Symmers: No cross examination.

WALTER MIDWOOD JOHNSON, being duly sworn and examined as a witness for the respondent, testifies as follows:

375 Q. Please state your age and residence and occupation?

A. 98 Selborne street, Attercliffe, Sheffield; 25 years; engineman.

376 Q. Were you in the British Navy during the war?

A. Yes, the Royal Marines attached to the British Navy.

377 Q. You were a marine attached to the British Navy?

A. Yes.

378 Q. And when did you join the British cruiser "Virginian"?

A. On the 20th of April, 1915.

379 Q. Were you by her continually during 1915 after that date?

A. Yes.

380 Q. And what watch did you take?

A. On the "Llama"?

381 Q. Yes.

A. The morning watch.

382 Q. Between what hours?

A. The day she struck, I mean.

[fol. 135] 383 Q. Yes, the day the "Llama" struck, what watch did you stand?

A. The morning watch, 4 to 8.

384 Q. Who relieved you?

A. Cunningham.

385 Q. Who gave the orders to the wheelsman while you were standing watch?

A. The American officer on watch.

386 Q. State whether or not you heard at any time Lieutenant Cox give any directions or instructions to the crew of the "Llama" or the officers of the "Llama"?

A. No, not while I was there, not in my presence.

387 Q. State the weather conditions that day that the "Llama" stranded, will you?

A. Very good.

Cross-examination by Mr. Symmers:

388 Q. Did you notice anybody on the bridge while you stood on watch, say between 7 and 8 o'clock?

A. Just the officer and the man at the wheel and myself; that was the only three that were on.

389 Q. Did you see Mr. Cox about that morning?

A. Not at that time.

390 Q. What time?

A. Not till after 8.

391 Q. Where did you see him after 8?

A. He was on the bridge when she struck?

392 Q. Well, how long before she struck?

A. I could not say; I was down below when she struck.

393 Q. When was it you saw him on the bridge?

A. When I came up from below after she had struck.

394 Q. Was he by himself or was he standing with anyone?

A. He was with the captain and other two officers.

395 Q. What side of the bridge?

A. On the starboard side of the bridge.

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VALENTINE STUART COX, being recalled on behalf of the respondent, further testified as follows:

396 Q. Mr. Cox, I will show you a copy of a letter from the Admiralty to the Foreign Office of the British Government sent at the request of the Embassy here relative to the instructions for officers [fol. 136] in command of armed guards belonging to the Tenth Cruiser Squadron on October 29, 1915, and ask you to state whether or not the instructions reported by the Admiralty were the instructions received by you and under which you were acting at the time you boarded the "Llama"? (Showing same to witness.) I will produce the original letter when it is received.

Mr. Symmers: I object to this as incompetent, irrelevant, immaterial, obviously intended by the British Government as the basis for the contention that the British Government could not be held responsible for the acts of its agents in the seizure of neutral vessels and the taking of such vessels into Kirkwall or elsewhere; also for the reason that it does not appear that these instructions were ever previously seen by the witness.

Mr. Staley: I may say that I have incorporated in my question that fact: whether he has seen them or not and secondly, whether he was acting under those orders at the time.

A. Yes; those are the regulations that we had given to us to read and to note when we commenced our armed boarding, and those were the ones that were in force at that time.

397 Q. You have seen those instructions before?

A. I have seen those instructions before.

398 Q. You were acting under the instructions at the time?

A. I was.

399 Q. And did you carry out those instructions with respect to what you did aboard the "Llama"?

A. I did.

Mr. Staley: I will have that marked.

Mr. Symmers: I object to the document as incompetent, irrelevant and immaterial.

Mr. Staley: May I ask counsel if he objects to it because it is not [fol. 137] now proven by the Admiralty or that if properly proven it would be irrelevant, incompetent and immaterial. Because if his objection is based on the first feature, I will have to, of course, at the proper time, call a representative of the British Admiralty to show that this is a communication from the British Admiralty and that it incorporates the orders which it purports to incorporate. I will offer the letter in evidence.

Mr. Symmers: It is admitted that the letter produced by counsel is a copy of the letter written by the British Admiralty to the British Foreign Office and is not objected to because it is a copy.

(Same marked by stenographer "Government Exhibit No. 2.")

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#### GOVERNMENT EXHIBIT No. 2

(Stamp:) American Embassy, 5 Aug. 1920. London. N. L. 13877/20.

5th August, 20.

SIR: With further reference to Foreign Office letter No. K. 11492/4228/145 of 21st July, relative to the loss of the American S. S. "Llama," I am commanded by My Lords Commissioners of the Admiralty to acquaint you, for the information of the Secretary of State for Foreign Affairs, that in accordance with a request made verbally yesterday by Mr. C. C. Williams of the American Embassy they have examined the available records and find that the following were the standing instructions for Officers in command of armed guards, belonging to the 10th Cruiser Squadron, which were current on 29th October, 1915.

"Responsibility for the navigation of vessels sent in should never be undertaken unless absolutely necessary. The Master should be

✓  
 "given the special route to be followed, the Officer in Charge of the [fol. 138] "armed guard exercising sufficient supervision to see that this is carried out and rendering any assistance asked for."

I am to request that Mr. Williams of the American Embassy may be informed accordingly upon receipt of this letter.

I am, Sir, your obedient servant,

The Under Secretary of State, Foreign Office.

(SCB.9497.)

\_\_\_\_\_

Cross-examination by Mr. Symmers:

400 Q. You have been shown Government Exhibit No. 2 of this date purporting to incorporate certain alleged instructions for officers in command of armed guards; do you know when those instructions were first issued?

A. I could not say exactly when they were first issued; no.

Mr. Staley:

401 Q. Can you say about?

Mr. Symmers:

402 Q. Can you say when you first saw them?

A. Well, I think I am right in saying in January, 1915.

403 Q. Was that when you became an armed guard?

A. That was when I first—

404 Q. Do you know whether those instructions were altered or varied at any time from that time down to the time of the stranding?

A. Not to my knowledge.

405 Q. Can you say that you ever saw them since January, 1915, until today?

A. Yes; I have seen them since.

406 Q. When did you see them?

A. I saw them in another ship.

407 Q. What other ship?

A. The "Chester."

408 Q. When was that? Did you join her afterwards?

A. Afterwards; yes.

[fol. 139] Re-examination by Mr. Staley:

409 Q. Were these instructions kept aboard the cruisers?

A. Yes; they were kept in weekly orders.

I hereby certify the foregoing to be a true and correct transcript of the testimony of the witnesses herein.

P. A. Edmunds, for C. E. Barnett & Co.

[fol. 140]

IN UNITED STATES DISTRICT COURT

[Title omitted]

## COLLOQUY OF COURT AND COUNSEL

During counsels' opening Judge Lynch called the attention of counsel to the fact that he had signed the answer while United States Attorney. The following stipulation was thereupon entered into:

It is stipulated between the parties that the answer herein signed by Judge Lynch when District Attorney was prepared in the Attorney General's office in Washington; that the Judge's signature thereto was purely formal; that he took no part in the preparation of the case, is not familiar with the issues or facts, and that the parties agree, so far as they are concerned, that no disqualification in any formal manner really exists and they agree to proceed with the trial before him.

[fol. 141] Mr. Kirlin: I offer in evidence and read the deposition of Christian P. Jensen, third officer, and Thomas Clinch, master of the steamer. The original deposition I will hand to your Honor.

The Court: You may make the further notation that at the time the testimony was taken Mr. Joseph L. Bodine was United States Attorney.

Mr. Ryan: I would like to press the motion to strike out the answers of the witness on the ground that it is a conclusion; on page 8: Q. Did you overhear a conversation, &c.; he says, "I do not recall the exact words he said, &c."

The Court: I will note your objection. I will eliminate from my consideration any conclusions of the witness and consider his facts only.

Mr. Kirlin: The logbooks having been identified, I now offer them in evidence.

Mr. Ryan: I object on the ground that the deposition of this witness who was the watch officer on the bridge at the time shows that he did not make any of the entries in the logbook, and that his information was that the entries were made relative to this stranding several days after the stranding and by an officer who wasn't even on the bridge.

The Court: All right; you may withdraw the offer at this time and renew the offer later.

Cross-examination read by Mr. Ryan.

Mr. Kirlin: At the end of that we renewed again the offer of the logs.

The Court: You may renew it at the close of all the testimony.

Redirect and recross-examination read by Mr. Kirlin and Mr. Ryan respectively.

[fol. 142] Counsel for libelant reads deposition of Edward Clinch, master of the ship.

Cross-examination read by Mr. Ryan:

Respondent offers a photographic copy of the statement under oath of the master.

Mr. Kirlin: I have not any information at all about it, but I will look at it and reply to my friend later.

The Court: Just pass it for the time being and give Mr. Kirlin a chance to look it over during recess between one and two.

Recess.

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### After Recess

Counsel proceed with the reading of depositions.

Respondent's counsel re-offers statement under oath before the Receiver of Wrecks.

Mr. Kirlin: With reference to that, your Honor, the only thing he asked him about was this one point and the captain has answered about that; now, it doesn't seem to me it is just to the captain, without showing him anything at the time or getting him to identify it or directing his attention to other things, that we should put in here an entire statement taken before the British Wreck Commissioner, who it must be seen, of course, had a contrary interest to the captain, because if the United States has to pay for this loss, why they will go to the British to get it back.

Mr. Ryan: That is entirely a conclusion of counsel.

The Court: I think I will admit it.

Libelant's counsel prays an exception, which is hereby allowed and sealed accordingly.

(Sealed.) Received and marked Exhibit R.

[fol. 143] Mr. Kirlin: Now, if your Honor please, I am required by the pleadings to produce the original policies of insurance and I therefore produce them; first the policy on the ship.

Received and marked Exhibit L. 6.

Also original policy on freight.

Received and marked Exhibit L. 7.

Issue is also raised as to filing of proofs of loss; these were, I find, presented through the owners' brokers, Messrs. Johnson & Higgins, and Mr. Ryan is good enough to agree that their letters might be put in in lieu of the evidence of a witness; so I offer the letter of Johnson & Higgins, dated January 11, 1917, to the War Risk Bureau enclosing proofs of loss and letter from the War Risk Bureau to Johnson & Higgins, dated March 17, rejecting the claim and sending back the papers, and to these are attached the papers submitted and sent back.



I ask that they may be all marked as one exhibit; amongst these are bills of lading, invoice, freight bills and so on.

Received and marked Exhibit L. 8.

I also offer these charts that have been marked for identification, libellant's Exhibits 1, 4 and 5. And I renew the offer of the log-books.

The Court: I will admit them unless there is an objection.

Mr. Ryan: Can I glance over them a moment to see what objection I have?

The Court: Yes, certainly.

Mr. Kirlin: Now, your Honor, the issue is raised also as to the ownership of the vessel. I offer in evidence copy of the bill of sale certified by the Collector of Customs of New York to be a true copy of the original sale of the S. S. Brilliant now on file in this office and of the whole thereof and that the said vessel was registered at this port under the name Llama on October 8, 1914.

[fol. 144] Mr. Ryan: I will make my objection if any to that—he says he is going to call a witness to show the fact.

Received and marked Exhibit L. 9.

I also offer certificate of the Secretary of Commerce and Navigation attested by the Assistant Secretary of Commerce, that the Llama, a vessel, is registered as a vessel of the United States on October 8, 1914, and awarded official #212682, signal letters L D T K and is, as appears by papers on file with the Bureau of Navigation, Department of Commerce, the property of the Standard Oil Company of New Jersey, a citizen of the United States, and that this company was the beneficial, actual and entire owner of said vessel prior to May 1, 1914.

Received and marked Exhibit L. 10.

I also offer certificate of the Collector of the Port of New York that, according to the records of this office, the steamship called the Llama of New York, official #212682, tonnage 3,189 gross, 2,011 net, built at Newcastle-on-Tyne, England, in 1890, was last documented in this office October 8, 1914, and in that document, namely, permanent register #38, the following are recited as her only owners, viz.: Standard Oil Company, incorporated under the laws of the State of New Jersey, and that no sale of said vessel has since been made. Certificate is dated January 31, 1921.

Received and marked Exhibit L. 11.

I also offer a certified copy of the permanent register #38 referred to in the certificate of ownership, libellant's Exhibit 11.

Received and marked Exhibit L. 12.

Mr. Kirlin: Might I ask your Honor to suspend the *the* usual form? Mr. Hand has been called away to the telephone and perhaps your Honor would agree to let us read the deposition of the prize officer at this point.

[fol. 145] Mr. Ryan: These proofs of loss of Johnson & Higgins are offered merely for the purpose of showing that you have made proofs of loss?

Mr. Kirlin: And also for the purpose of introducing these papers, showing what proofs of loss were made.

Mr. Ryan: But the exhibits attached to it are not themselves offered in evidence, except as showing that you made proofs of loss?

Mr. Kirlin: To the effect stated in those papers.

Mr. Ryan: But the truth of those proofs—

Mr. Kirlin: They show what was called to the attention of the War Risk Board.

Mr. Ryan: There is a great mass of matter here which the Government has not had the opportunity to cross examine as to the truth of those statements; I don't want to be put in the position of agreeing to the truth of them.

Counsel for the Government renews his oral request of counsel for the libellant and the libelant, that the libelant produce for examination of counsel for the Government and to be offered in evidence the original charts which were on the bridge of the Llama at the time of the stranding of that vessel on October the 31st, 1915, on which charts the master of the Llama laid out the courses from New York to Kirkwall, most particularly for that chart showing the absolute laying out of the courses by the master of the Llama from the time the Llama was overhauled by the British cruiser Virginia on October 29, 1915, until the time of the stranding of the vessel on October 31, 1915. This request and demand are made because the testimony of libelant shows that the Llama was on the rocks from October 31, 1915, at 9:10 A. M. until November 5, 1915, before she was abandoned and that numerous visits were made back and forth to the vessel by the master of the Llama and by other representatives of the owner of the [fol. 146] vessel from shore, and it is believed that the charts were removed at that time and the Government believes that they are most material evidence in this case.

Mr. Kirlin: I am not aware, in the first place, that there is any testimony that the master ever laid down any courses on any chart after the prize officer came on board or that there is any testimony to that effect; in the second place, I am not aware that the people that went out to the ship went on board in the chart room where these charts were after they were forced to leave her for the first time by the British authorities. In the next place, I call attention to the fact that the captain has testified that the British authorities took possession completely from the time of the stranding, and in the fourth place, as far as I know, no charts have ever been saved from her; at least, as far as I have seen any and I am not in position to respond to that call.

Mr. Ryan: Are you in a position, Mr. Kirlin, to state positively that none of the counsel in your law firm or associated or employed by you in your office have possession of those charts or know of the existence of them or where they can be found?

Mr. Kirlin: I am the first one who saw the witnesses when they

came ashore and asked for them, and they were unable to produce any or tell anything about any charts; we have never had any charts or seen any charts at all that were supposed to have been saved. I am in a position to go on now; my other witness has returned.

The Court: All right; proceed.

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ROBERT F. HAND, called and sworn on behalf of the libelant, testified as follows:

Direct examination by Mr. Kirlin:

Q. How old are you, Mr. Hand?

A. Thirty-seven.

Q. Where do you reside?

A. Plainfield, N. J.

Q. How long have you resided there?

A. Practically all my life.

[fol. 147] Q. How long have you been connected with the Standard Oil Company of New Jersey?

A. Just a little over 18 years.

Q. What is your present position?

A. Assistant manager of the marine department of the Standard Oil Company of New Jersey.

Q. Is that the department that has the handling of the ships in the foreign trades?

A. It has the handling of all ships owned by the Standard Oil Company of New Jersey.

Q. Amongst others, of course, it handles the foreign boats?

A. Yes, sir.

Q. Were you in that department during the war, especially in 1915?

A. I was, yes, sir.

Q. In the same position?

A. In a similar position.

Q. Under Mr. Warden, David T. Warden?

A. Yes, sir.

Q. Was he at that time the manager of that department?

A. He was.

Q. Now, you had been there during 1914 also, had you, after the outbreak of the war and up to 1915?

A. I had been.

Q. Do you remember the Llama incident?

A. I do; I was directly in charge of it under Mr. Warden.

Q. Reference has been made by counsel for the Government to an arrangement between your company and the British Government for ships to call at Kirkwall. Do you remember the first ship that had instructions to call at Kirkwall, and the voyage of that ship in pursuance of that arrangement?

A. You mean other than the Llama?

Q. Yes.

A. I don't recall the exact ship, but it was early in the fall of 1914, to the best of my recollection.

Q. Had the Llama ever had instructions to call at Kirkwall prior to the voyage on which she left New York on October 14, 1915?

A. She had not.

[fol. 148] Q. So if she had gone into Kirkwall on a preceding voyage had she gone in there on instructions from the company?

A. She had not.

Q. Had she been taken in on a British prize crew on a previous occasion?

A. She had been taken in on previous voyages.

Q. Now, on this voyage what did the ship carry?

A. A cargo of case oil in bulk and 300 barrels of mineral coal oil and 30 barrels glue.

Q. What was the freight on the cargo?

A. The freight on the entire cargo was \$44,686.82.

Q. Was that freight lost by the loss of the ship?

A. It was.

Q. Was any part of it ever paid?

A. None of it has been paid.

Q. And was that freight that was insured under the policy for \$44,000 which has been put in evidence?

A. It was.

Mr. Ryan: Objected to on the ground it is asking for a conclusion of the witness.

Mr. Kirlin: No; I am asking for facts, whether that freight that you now mention, \$45,000 was the freight on which you took out this policy on which we are suing?

A. It was.

Q. And has the company ever received any part of that freight?

A. It has not.

The Court: Let me have the amount again.

The Witness: \$44,686.82.

Q. Now, there is a claim here also for certain disbursements that are alleged to have been incurred by the Standard Oil Company in consequence of this stranding, that are in paragraph 9 of the libel. The first item, "To allowance to the S. S. Wyco for going to the assistance of Llama, \$2,872.98." What were the circumstances [fol. 149] under which that expense was incurred?

A. The Wyco was instructed by our department to go to the assistance of the Llama with a view of either—

Mr. Ryan: Just a moment; before he answers the question I object to that question on the ground it is incompetent, irrelevant and immaterial on the ground that there is no evidence to show that these disbursements were covered by any policy that has been introduced in evidence.

The Court: The present question is, what is the nature of the charges? You may argue later whether they are entitled to recover for them.

Mr. Kirlin: We are claiming that under the sue and labor clause.

A. Coal, provisions, port charges and for the time lost.

Q. Time of the Wyco?

A. Time of the Wyco lost in going to the assistance of the Llama.

Q. She was ordered in after the Llama was stranded?

A. After the Llama was stranded.

Q. And she arrived there too late to be of assistance?

A. Yes, sir.

The Court: What did that amount to?

The Witness: The disbursements or charge made on the Wyco, \$2,872.98.

The Court: Which you paid?

The Witness: It has not been paid in the sense that we have ever received any money; it is a bookkeeping entry made against the Llama.

Q. The Wyco was a steamer owned by the same company?

A. Owned by the Standard Oil Company.

Q. And that, I understand, is a charge against the Llama for the time employed by the Wyco in connection with this service and the expenses of coal, wages, etc., during the deviation in going in there?

A. Yes, sir.

[fol. 150] Q. The second item, "Cable expenses incurred in connection with the sinking of the steamship Llama, \$209.75; is that the amount your company actually paid for cables in connection with the matter?

A. Yes, sir.

Q. Third item, wages and maintenance members of the crew who remained by the steamship Llama from the time of her stranding until the time of her sinking, \$271.88." Was that amount paid?

A. That was actually paid to the members of the crew of the Llama.

Q. For that period?

A. For that period.

Q. The last item is bill rendered and paid to the British Admiralty for services in connection with the stranding, seventy-three pounds, thirteen, four at \$4.75—\$349.92. Have you got the bill for that?

A. I have, yes, sir.

Q. What does that state about what the charge was for?

A. This is a bill rendered by the Admiralty and reads: "Admiralty claim for expenses arising out of assistance rendered by His Majesty's transport Prudenharn to the steamship Llama while ashore in Westray Firth in November, 1915, value bunker coal expended thirty-five pounds seven and two——"

Mr. Ryan: From what is the witness reading?

The Witness: A bill rendered by the British Admiralty which I am quite willing to offer. The letter was sent to our agents in London and I think I have one in my files here if you want to see it.

Mr. Ryan: That is the original?

The Witness: The original; yes, sir.

Q. Is that the whole of it now?

A. That's the whole account, seventy-three pounds, thirteen and four.

Q. Have you stated the items of all of it, when counsel interrupted you?

A. Coal, overtime of crew of Prudenhams, travelling expense, one coil of rope lost, 2½-inch steel wire hawser lost—total of seventy-three pounds, thirteen, four. I also have the receipt in which the [fol. 151] paymaster general of the Admiralty acknowledges receipt of this money.

Q. It was actually paid by the company?

A. Yes, sir.

Cross-examination by Mr. Ryan:

Q. Did you personally at any time make any arrangement with the British Admiralty that vessels of the Standard Oil bound for Scandinavian ports should touch at Kirkwall going to Scandinavia?

A. Our ships going to Scandinavian ports had received no instructions to call at Kirkwall; each voyage bound to Scandinavia they were intercepted by British men-of-war—

Q. Just answer the question.

The Court: The question is whether you personally made any arrangement.

A. I personally did not; the company made—

Mr. Kirlin: You did not; that answers that.

Q. You don't know of your own knowledge what arrangements were made by your company with the British Admiralty authorities?

A. I do of my own knowledge.

Q. How do you know it?

A. By the correspondence which passed through me.

Q. Have you that correspondence; can you produce it?

A. I can produce it; I haven't it with me.

Mr. Kirlin. It is attached to the proofs of loss.

Q. As a matter of fact, hadn't the Standard Oil Company beginning immediately after February 19, 1915, ordered every one of its vessels to stop at Kirkwall on its way to Scandinavian ports and didn't the Llama, as a matter of fact, in pursuance of such direct instructions, stop at Kirkwall on her previous voyages between February, 1915, and October, 1915?

A. The Llama was instructed to call at Kirkwall by us, but that was in pursuance of an agreement which we had with the British [fol. 152] Government which was not a voluntary agreement in any sense of the word.

Q. Just answer the question. On the voyage of the Llama prior to her voyage beginning on October 14, 1915, on her voyage previous to that one, from New York to Scandinavian ports, wasn't she instructed by the Standard Oil Company before she left New York to stop at Kirkwall?

A. She was not, as far as I recall.

Q. Well, can't you examine your records and ascertain exactly about that?

A. Our records will show, but I am positive that she didn't have instructions on the previous voyage.

Q. Do you remember a cable that was sent on February 19, 1915, to the Foreign Ship Department of the Standard Oil Company at 26 Broadway, New York, from P. S. and Sons at London, stating as follows: Pioneer tendered at Kirkwall yesterday, release today. In future instruct all vessels passing north of Scotland to call voluntarily and report at Kirkwall, otherwise taken there and delayed."

A. I don't recall that identical telegram.

Q. This is a cable.

A. Or cable. It sounds to me—but I can't say positively—

Q. You are in the marine department, are you?

A. I am. It was formerly the foreign shipping department; on December 1, 1920, it was changed to the marine department.

Q. I refresh your recollection, and ask you whether that cable was not received by the foreign shipping department, which is now the marine department, of which you are assistant manager, on or about February 19, 1915?

A. I think that telegram was received.

Q. Well, your previous testimony was in error, then, that Llama had not on her previous voyages been directed by the Standard Oil Company, before she left New York, to stop at Kirkwall?

Objected to.

[fol. 153] Q. On voyages to Scandinavian ports subsequent to February 19, 1915, and prior to October 14, 1915.

The Court: What is the objection?

Mr. Kirlin: The objection is that is a telegram from over there asking them to do it; my friend is assuming that they have done it.

The Court: I understand; I sustain the objection.

Q. As a matter of fact, at some time between January, 1915, and October 14, 1915, the Standard Oil Company entered into an agreement with the British Admiralty whereby all vessels of the Standard Oil Company sailing from New York for Scandinavian ports were to stop at Kirkwall, didn't it?

A. They did.

Q. And it was in pursuance of such an arrangement that the



Llama on her voyage beginning on October 14, 1915, did clear and touch at Kirkwall?

A. Yes, sir.

Q. I show you these papers which purport to be the original clearance papers of Llama on her voyage from New York to Copenhagen, via Kirkwall, beginning on October 14, 1915, also a photostatic copy of them, and ask you whether or not those are the original clearance papers and whether or not that photostatic copy is a true copy of those original clearance papers?

A. I cannot say that without comparing them; this is the original clearance.

Mr. Kirlin: If he identifies the original, I will agree with you about the copy.

Q. This is the original clearance; there is no question about that?

A. No, sir.

Mr. Ryan: Will you have them marked now, so we can identify it?

Q. These are the copies.

Mr. Ryan: Government offers these papers in evidence, as Government Exhibit 4.

[fol. 154] Mr. Kirlin: What are you offering?

Mr. Ryan: Photostatic copy testified by the witness to be a true copy of original clearance papers of Llama from New York on her voyage beginning on October 14, 1915, from New York to Copenhagen via Kirkwall.

Q. I show you libelant's Exhibit No. 9 and ask you whether you are familiar with that bill of sale and the transaction out of which it grew?

A. I am.

Q. Can you state of your own personal knowledge whether the \$50,000 consideration mentioned in that bill of sale was ever actually paid by the Standard Oil Company to the Deutsch Amerikanische Petroleum Gesellschaft?

Mr. Kirlin: I object; that is a document under seal and the consideration is recited as having been received in the paper.

The Court: The transfer is recognized by the Government.

Mr. Kirlin: Yes.

The Court: I sustain the objection.

Q. As a matter of fact, haven't the libelant's commission and/or the British Admiralty notified the Standard Oil Company of New Jersey that they or it regarded all these attempted transfers of title by bill of sale after the outbreak of the war between England and Germany from the Deutsche-Americanische to the Standard Oil Company of New Jersey as ineffective and invalid under their interpretation of international law, so far as transferring the title to these German registered vessels to the American Company is concerned,

and haven't they, as a matter of fact, seized all the other vessels of that German Standard Oil subsidiary and taken over control and operation of them, to the exclusion of the Standard Oil Company of [fol. 155] New Jersey; and don't they now, through their agents exercise such control and exclusive possession of all other vessels of the same class of the Llama of that German corporation?

Objected to.

Objection sustained.

Libelant rests.

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#### ARGUMENT OF COUNSEL

Mr. Ryan: The Government reads in evidence the depositions on behalf of the respondent taken at London, England, at the office of the American Embassy on August 5, 1920, counsel for both parties being present, as follows: Valentine Stuart Cox, David Cunningham, Ernest Edward Knight, Ernest Brown, Walter Midwood Johnson and Valentine Stuart Cox, recalled.

Mr. Kirlin: Those proofs of loss, I submitted, show the shipment of cargo, but my friend made some sort of reservation about them; is there any question intended to be raised that the cargo was actually shipped?

Mr. Ryan: Oh, no.

(Objections overruled in Cox deposition.)

Mr. Kirlin: I don't like to see just a patch of the general orders put in; it seems to me we should have had the whole of the order.

The Court: I will permit it to stand. Have you the remaining orders?

Mr. Ryan: That's all that I have.

The Court: Have you any further testimony?

Mr. Ryan: No; I had intended to have an expert witness today, but he didn't come down from Washington.

The Court: Well, do you rest or not?

[fol. 156] Mr. Ryan: You have rested?

Mr. Kirlin: I have rested.

Mr. Ryan: Yes, I will rest; the master testified to what the expert would testify to.

Adjourned to Wednesday, February 2, 1921, at 10:30 A. M.

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Wednesday, February 2, 1921—at 10:30 a. m.

Case continued.

Appearances as before.

Mr. Ryan: The Government has no objection to the remainder of scrap logbook offered in evidence by counsel for libelant other

than the entries on October 3, 1915, the date of the stranding being received by the Court for its consideration, subject, of course, to the consideration that these entries have not been properly proved, but are merely for the Court's information; so far as an entry in the scrap logbook made October 29, 1915, is concerned, the Government consents that that be received in evidence for all and any purpose and at this point I read in evidence that entry on October 29, 1915, reading as follows:

Mr. Kirlin: I want to object to the reading of it.

Mr. Ryan: Will you first permit me to read it?

The Court: You want to make an objection before it is read into the record?

Mr. Kirlin: Yes. Now, I am not at all keen about putting these logbooks in, but I think it is only the part of candor due to the Court to offer them. Now, if they are objected to I don't mind their being ruled out; the substance of them is in the testimony, but I do object to counsel reading a portion of a scrap log when the testimony is that the scrap log is merely a memorandum made during the watch by the officer of the watch, is used as a basis of writing up the ordinary log, which, when written up, is the official log and may contain, not only what the officer has noted down, but what the chief officer who writes up the log may wish to add to it as embodying the full history of that watch; and if we are going to take any of it, we should take it all.

The Court: Yes, that is true.

Mr. Ryan: The Government will withdraw its objection to the entry of the logbooks.

The Court: They are all in; let them all be marked and if you desire to read from any portion of the log in the course of your argument you may do so. It is not necessary to read it into the record, because the whole logs are in.

Argument of counsel.

Recess.

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#### After Recess

Further argument of counsel.

Adjourned to Thursday, February 3, 1921, at 10:30 A. M.

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Thursday, February 3, 1921—10:30 a. m.

Case continued.

Appearances as before.

Mr. Kirlin: Mr. Ryan called my attention to the fact yesterday that the item of claim under the sue and labor clause in behalf of the Wyco, and I think the same principle also applies to the

amount that we paid the British Government, were really expenditures made particularly in behalf of cargo, which is not before [fol. 158] us here, so I have had those items averaged, and with the consent of my friend I will put in these little exhibits, the effect of which will be to withdraw the portion of each of those two items which on an average would have been applicable to cargo, and limit the claim for the allowance on the Wyco to \$2,023.84 and the proportion of the bill paid to the British Admiralty to \$246.50.

Received and marked Exhibits L 12 and L 13.

Further argument of counsel.

The Court: I am going to take this case under advisement. I will give each side until February 19 to submit briefs.

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[fol. 159] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION—Filed July 30, 1921

Messrs. Kirlin, Woolsey, Campbell, Hickox & Keating, proctors for libelant (J. Parker Kirlin, Esq., and P. Randolph Harris, Esq., of counsel).

Elmer H. Geran, Esq., United States Attorney, proctor for respondent (James W. Ryan, Esq., Assistant United States Attorney, of counsel).

LYNCH, District Judge:

The libelant's tanker "Llama," bound for Copenhagen with a cargo of oil, was insured by the Treasury Department of the United States (Bureau of War Risk Insurance) as follows: \$115,000 covering the vessel and \$45,000 covering the cargo. The vessel and cargo became a total loss during the voyage and the libelant seeks to recover its losses from the insurer.

The tanker sailed from New York October 14, 1915, intending to stop at the port of Kirkwall, Scotland, before proceeding to Copenhagen. It was possible to visit Kirkwall by either steaming through Fair Island channel, between the Orkney and the Shetland Islands, north of Scotland, and then southward by way of an open sea, or by proceeding through the Westray Firth. The master of the ship [fol. 160] testified that the Fair Island course was the course usually followed by him during the war, but that on one occasion, the previous trip, he was taken into Kirkwall via Westray by a British naval prize crew.

On October 29th the tanker was about 400 miles westward of Kirkwall when she was stopped by the British warship "Virginia." A lieutenant and four men from the "Virginia," all armed, boarded her and examined her papers and documents. These documents showed that she was bound for Copenhagen, a neutral destination,

and that her master was under instructions to visit Kirkwall. The master informed the lieutenant, whose name was Cox, that he intended to proceed to Kirkwall by way of the Fair Island passage. Lieutenant Cox thereupon communicated with the "Virginia" by semaphore, and, as a result of instructions received by the lieutenant from the "Virginia," which were to take the ship into Kirkwall, he, the lieutenant, directed that the vessel proceed to that port through Westray Firth.

The tanker arrived off Westray Firth on the night of October 30th and Lieutenant Cox, who had been instructed not to pass through the islands at night, directed that she remain off the entrance until morning. The following morning (October 31st) the course was fixed by Lieutenant Cox and the vessel began its passage into and through the Firth as directed by the lieutenant. While proceeding along near a point at the outer edge of the Skea Skerries she struck a submerged rock, broke up and became a total loss.

These are the facts as I find them.

There is a conflict as to whether the course through Westray Firth was taken by direction of the British naval officer or was selected by the master of the "Llama." The master and the third officer, Jensen, both testify that it was pointed out to the naval officer that the general passage was through the Fair Island channel, where it was safer, but that the naval officer, pointing out that submarines were [fol. 161] operating "out there" (the open sea beyond the Orkney and Shetland Islands) urged that it was better to get in as quickly as possible, saying, "We will go through the Westray."

The naval officer, who was about 22 years of age at the time of the "seizure," denies that he altered the course of this vessel. Testifying five years afterward, he says that the master informed him when he boarded the "Llama" that it was intended to proceed into Kirkwall via Westray.

My conclusion, however, is that if the "Llama" had not been held up by this cruiser she would have proceeded to the north of the Orkneys and thence down the coast to Kirkwall where, the master testified, "it was just as safe as the Atlantic Ocean," and that the Westray passage was taken at the instigation and continued under the direction of the naval officer.

This conclusion is arrived at not only because the weight of the evidence seems to justify it, but also because the version of the master and third officer of the "Llama" seems to me to be more probable. The war between Great Britain and Germany was then in progress and German submarines were plying the open sea beyond the Fair Island channel. Although this was a neutral vessel carrying a non-contraband cargo to a neutral port, those in control of a German submarine would undoubtedly have evinced considerable interest upon discovering a neutral vessel loaded with oil in the control of a British armed crew, and it seems highly improbable that the possibilities of this submarine peril were overlooked by the young lieutenant at the time the intended course into Kirkwall was discussed by him with the master. The instructions to the British

officer were that he was to take the vessel to Kirkwall and, in view of the fact that the vessel intended to go to that port, these instructions really meant that he was to see that she got there. It was perfectly natural for him to decree that she should proceed via the [fol. 162] shorter route—a route which though more dangerous from a navigation standpoint was practically free of enemy war craft.

There is also a conflict with respect to the activities of the lieutenant while aboard in connection with the navigation of the vessel. The master and the third officer testified that all courses were initiated by the naval lieutenant, while Lieutenant Cox testified that the courses were initiated by the ship's crew—not by him.

The lieutenant admits that either he, or one of his subordinates, was in constant touch with every movement of the vessel; that nothing was done in the way of navigation that he or they did not know about and consent to and that he was on the bridge on the morning that the vessel was being navigated through Westray just previous to her striking the submerged rock. He denies, however, that he actively participated in the setting of the course at any time while he was aboard.

The master and third officer, the latter no longer employed by libelant, both insist that he initiated and actively participated in the setting of all courses and that on the morning of October 31st, previous to the vessel's mishap, all maneuverings of the vessel were under the lieutenant's explicit directions. The weight of the testimony and the probabilities of the situation lead me to the conclusion that the true version is that of the witnesses for the libelant.

Having determined these facts we approach a consideration of the clause of the policies under which the controversy arises. That clause is as follows:

"Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are of men-of-war, letters of marque and counter marque, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes and peoples, of what nation, condition, or quality whatsoever, and all consequences of hostilities or warlike operations, whether before or after declarations of war."

It is the contention of the respondent that the losses sustained by the libelant were not due to or occasioned by any of the perils insured against as set forth in this clause, but that the proximate cause of the loss was an error in navigation, a marine peril, as distinguished from a war peril.

The respondent, in support of this contention, cites and quotes from a large number of interesting opinions. But I do not find these decisions useful because of the fact that the insurance contract now under consideration is quite different from the policies reviewed in those cases.

The libelant, however, directs attention to a case in which a clause quite similar to that now under consideration was construed by the

Circuit Court of Appeals for the Second Circuit (*Muller v. Globe & Rutgers Fire Ins. Co. of the City of New York*, 246 Fed. 759). The clause there was as follows:

"This insurance covers only the risk of capture, seizure, or destruction or damage by men-of-war, by letters of marque, by takings at sea, arrests, restraints, detainments, and acts of kings, princes, and people, authorized by and in prosecution of hostilities between belligerent nations."

In that case the steamer "Canada," loaded with cotton, intended to take a course northward of both the Orkneys and Shetlands, and thence to Kirkwall, Scotland, there to submit to examination by British authorities; that when within 120 miles of the British coast the vessel was boarded by an armed party consisting of one officer and six men, which party directed the steamer to go to Kirkwall by the passage between the Orkneys and Shetlands, and by night, which the "Canada's" master objected to because the lights between those islands were removed or extinguished. He was compelled to [fol. 164] attempt it, however, after which he and the British naval officer consulted regarding the course, the master testifying that he relied on the alleged superior local knowledge of the British officer. The vessel ran ashore at the foot of a cliff and became a total loss. I quote from the opinion of Circuit Judge Hough:

"That the Canada and her cargo was seized, arrested, and detained within the meaning of the policy we think too plain to require more than mention; the sole query is whether her loss proximately resulted therefrom.

\* \* \* \* \*

That cause is proximate which sets the other causes in motion; only when causes are independent is the nearest in time looked to. *Insurance Co. v. Boon*, 95 U. S. 117, 24 L. Ed. 395, a case whose facts are instructive and interesting. If there is an unbroken connection between act and injury, the act causes the injury; an intervening act is not the proximate cause of injury, unless it is efficient to break the casual connection (*Milwaukee, etc., R. R. v. Kellogg*, 94 U. S. 469, 24 L. Ed. 256).

\* \* \* \* \*

The Hilary did not say to the Canada, 'Go to Kirkwall, as you intended; the lights are out, and you must pick your own way,' but compelled her to pursue an imposed and dangerous route, and especially to go by night in charge of a naval officer whose local knowledge was perhaps deficient, and certainly not useful. Not only did a belligerent's necessity create the peril of unlighted seas, but by 'acts of kings authorized in prosecution of hostilities,' the Canada was forced to run risks that even in time of war she could and would have escaped under the uncontradicted evidence. Furthermore, the very purpose of compelling such navigation was to prevent aid and



[fol. 165] comfort reaching enemies of Great Britain; therefore the insured cotton was lost in the continuing process of detaining the ship that carried it, for purposes of search, and seizure, too, if the facts found had warranted it.

Thus we find no intervening cause, breaking the casual connection between the control assumed by the Hilary's boarding party, and the loss of the ship. There was no time when the shipmaster was left to navigate his own ship in his own way; she was lost while he was doing what he had to do. A workman compelled to handle familiar tools with one eye blindfolded and injured by his own blundering use of them, is in truth injured by the person who put compulsion upon him."

In the instant case the master testified that previous to this voyage his vessel had been boarded by boarding or prize crews; that when they came aboard they had full control over the ship and he and the crew obeyed their orders in ever-particular. So what do we find? A superior power backed by authority of force acting upon the master to prevent him from keeping to his plan to proceed through the open waters of the Fair Island Passage—a longer voyage, but clear of the hazardous waters of Westray. This lieutenant was on board as the supreme authority, with armed men to support that authority, and the statement of his decision to proceed through Westray Firth assumed the force of an order. So at the very outset, therefore, a chain of events was stated by this taking at sea, arrest, restraint or detainment in consequence of hostilities, which caused directly the taking of an obviously more dangerous course than the one that would have been followed if the promoting cause had not occurred, and the course of the vessel thereafter was under the constant guidance and control of this active war officer.

As in the Muller case, *supra*, there was no intervening cause breaking the casual connection between the control assumed by the "Vir-[fol. 166] ginia" boarding party and the loss of the ship. There was no time when the shipmaster was left to navigate his ship in his own way; she was lost while he was doing what he had to do.

The "Llama" was all the time in the grip of the captor and of its armed representatives, whose control never ceased, but efficiently caused the loss. After the seizure the adventure of taking the ship into Kirkwall was that of the British naval authorities, and the risk and responsibility of it was theirs.

My conclusion is that the loss of the "Llama" and cargo proximately resulted from perils covered by the policy and that, therefore, the libellant should have a decree for the full amounts of the loss under both policies, besides interest and costs.

[File endorsement omitted.]

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINAL DECREE—Filed Sept. 23, 1921

A libel having been duly filed in this court on the 12th day of May, 1919, by Standard Oil Company, a New Jersey corporation, and a resident of the District of New Jersey, against United States of America, the respondent above named, to recover from said respondent the losses sustained by the libelant under two certain certificates or policies of insurance, namely:

Certificate or policy of insurance No. 1263, duly issued by the Bureau of War Risk Insurance of the Treasury Department on or about the 8th day of October, 1915, signed by William G. McAdoo, Secretary of the Treasury, countersigned by J. Brooks B. Parker, Assistant Director of the Bureau of War Risk Insurance, and delivered unto the libelant, upon the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the Llama, in the sum of one hundred fifteen thousand [fol. 168] dollars (\$115,000) valued at the sum insured, in favor of Standard Oil Company (New Jersey), the libelant above named, and

Certificate or policy of insurance No. 1269, duly issued by the Bureau of War Risk Insurance of the Treasury Department on or about the 16th day of October, 1915, signed by William G. McAdoo, Secretary of the Treasury, countersigned by William C. Delanoy, Director of the Bureau of War Risk Insurance, and delivered unto the libelant, in the sum of forty-five thousand dollars (\$45,000) upon the freight and advances of the vessel called the Llama, in favor of said Standard Oil Company;

And due service of a copy of said libel having been made upon the respondent the United States of America, and said respondent having duly appeared herein by its proctor, the United States Attorney for the District of New Jersey, and the answer of said respondent, United States of America to the libel and complaint of Standard Oil Company having been filed herein, denying any liability in the premises on the part of said respondent, and this cause having duly come on to be heard on the pleadings and proofs adduced by the respective parties, and it having appeared that the losses sustained by said Standard Oil Company on account of the total loss of the steamship Llama, her freight and advances, on or about the 31st day of October, 1915, as well as the expenses and disbursements incurred by said assured, the libelant herein, in suing, laboring and traveling for, in and about the defense, safeguard and recovery of the said steamship Llama, her freight and advances, amounted to one hundred sixty-two thousand four hundred thirty-eight  $79/100$  dollars (\$162,438.79), of which proofs of loss were duly made by the libelant, and submitted to said Bureau of War Risk Insurance of the Treasury Department, and that payment thereof had been denied, and this

cause having been duly argued and submitted by the advocates for the respective parties, and due deliberation having been had, and [fol. 169] the Court having found that the said steamship Llama struck a submerged rock in Westray Firth, broke up and became a total loss on the morning of October 31st, 1915, and that the said loss of the steamship Llama, her freight and advances, were caused by and were due to perils insured against by the respondent under said certificates or policies of insurance, namely, valued certificate or policy No. 1263, in the sum of \$115,000 on the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the Llama, owned by and the property of the libelant, and certificate or policy No. 1269, in the sum of \$45,000 upon the freight and advances of said vessel, and the Court having filed its opinion in writing directing that the libelant recover from the respondent the amounts alleged in the libel to be due to the libelant on both causes of action, with interest and costs, and the costs of the libelant having been duly taxed at the sum of \$217.75.

Now, on motion of John M. Woolsey, proctor for the libelant, it is Ordered, adjudged and decreed that the libelant, Standard Oil Company, have, receive and recover of and from the United States of America under the said certificates or policies of insurance the following sums:

1. For total loss of the S. S. Llama, insured by and under said policy or certificate of insurance mentioned and described in the libel herein, that is to say, No. 1263, in the sum of \$115,000 on the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the Llama in favor of the Standard Oil Company (New Jersey) duly signed by William G. McAdoo, Secretary of the Treasury of the United States, and countersigned at Washington, [fol. 170] D. C., the 8th day of October, 1915, by J. Brooks B. Parker, Assistant Director of the Bureau of War Risk Insurance, and delivered to the libelant... \$115,000.00  
Interest from October 31, 1915..... 40,671.67
2. For total loss of the freight and advances of the said S. S. Llama insured by and under the said policy or certificate of insurance mentioned and described in the libel herein, that is to say, No. 1269, in the sum of \$45,000.00 upon the freight and advances of said S. S. Llama in favor of the Standard Oil Company (New Jersey), duly signed by William G. McAdoo, Secretary of the Treasury of the United States, and countersigned at Washington, D. C., the 16th day of October, 1915, by William C. Delanoy, Director of the Bureau of War Risk Insurance, and delivered unto the libelant 44,686.82  
Interest from October 31, 1915..... 15,804.24
3. Expenses incurred by the libelant in suing, laboring and traveling, for, in and about the defense, safeguard and recovery of the said S. S. Llama, her hull, ma-

chinery, boilers, equipment, stores and everything connected therewith, as well as the freight and advances of the said vessel, recoverable under said policy No. 1263 upon the said S. S. Llama, and under said policy No. 1269 upon the freight and advances of said steamship	2,751.97
Interest from October 31, 1915.....	973.28

Total .....	\$219,887.98
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[fol. 171] Together with the sum of \$217.75, costs of the libelant as taxed, amounting to the aggregate sum of \$220,105.73, with interest on the said aggregate sum until paid; and it is further

Ordered, adjudged and decreed, that unless this decree be satisfied or an appeal be taken therefrom within the period prescribed by law and the rules and practice of this Court after service of a copy hereof and notice of entry on the respondent, United States of America, or its proctor, the respondent, United States of America, pay to the libelant, or to its proctor, the amount due under this decree as aforesaid.

Charles F. Lynch, U. S. D. J.

[fol. 172] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF SETTLEMENT—Filed September 23, 1921

SIR: Please take notice that the foregoing decree will be presented to the Honorable Charles F. Lynch at the office of the Clerk of this court in the Post Office Building, City of Trenton, on the 23rd day of August, 1921, at 11 o'clock in the forenoon, for settlement and signature.

Dated, New York, August 17, 1921.

Yours, etc., John M. Woolsey, Proctor for Libelant.

To the United States Attorney, District of New Jersey, Proctor for Respondent.

[fol. 173] Settlement of foregoing decree is adjourned by consent to the 26th day of August, 1921, at 3 P. M.

John M. Woolsey, Proctor for Libelant. Elmer H. Geran,  
U. S. Attorney.

[File endorsement omitted.]

[fol. 174] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed February 23, 1922

SIRS: Please take notice, that the respondent, United States of America, hereby appeals to the United States Circuit Court of Appeals for the Third Circuit from the final decree entered herein on the 23rd day of September, 1921.

Dated, February 20th, 1922.

Yours, &c., Walter G. Winne, United States Attorney for the District of New Jersey, by Frederic M. P. Pearse, Assistant United States Attorney.

[fol. 175] To Kirlin, Woolsey, Campbell, Hickox & Keating, Esqs., Proctors for Libelant, and George T. Cranmer, Esq., Clerk U. S. District Court, District of New Jersey.

[File endorsement omitted.]

[fol. 176] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed February 23, 1922

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The petition of United States of America, respondent herein, respectfully shows:

First. That on or about the 12th day of May, 1919, Standard Oil Company of New Jersey filed its libel in the United States District Court for the District of New Jersey against United States of America to recover from the United States of America, respondent herein, losses alleged to have been sustained by the libelant under two certain certificates or policies of insurance, to wit:

Certificate or policy of insurance No. 1263 issued by the Bureau of War Risk insurance of the Treasury of the United States of America on or about the 8th day of October, 1915, upon the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the "Llama" in the sum of one hundred fifteen thousand dollars (\$115,000) valued at the sum insured in favor of the libelant above named; and

Certificate or policy of insurance No. 1269 issued as aforesaid in the sum of \$45,000 upon the freight and advances of the vessel likewise in favor of the libelant.

[fol. 177] Second. That said libel was filed for the purpose of recovering from the respondent losses alleged to have been sustained by the libelant on account of the total loss of the said steamship "Llama," her freight and advances on or about the 31st of October, 1915, as well as expenses and disbursements incurred by libelant in suing, laboring and traveling for, in and about the defense, safeguard and recovery of said vessel, her freight and advances.

Third. That such proceedings were thereafter had so that testimony was taken out of court and before the Court and argument was had before Honorable Charles F. Lynch, District Judge for the District of New Jersey, at the Post Office Building, in the City of Newark, and thereafter a decision was rendered by said Judge and a decree entered wherein and whereby it was ordered, adjudged and decreed that there be paid by the respondent to the libelant under the certificates or policies of insurance the following sums:

For total loss of S. S. "Llama" undr certificate No. 1263, the sum of .....	\$115,000.00
with interest from October 31, 1915 .....	40,671.67
For total loss of the freight and advances of said vessel under certificate No. 1269 .....	44,686.82
Interest from October 31, 1915.....	15,804.24
Expenses incurred by libelant in suing, laboring and traveling for and in and about the defense, safeguard and recovery of the said vessel, under policy or certificate No. 1263 and No. 1269.....	2,751.97
Interest from October 31, 1915 .....	973.28
<b>Total .....</b>	<b>\$219,887.98</b>

[fol. 178] Together with the sum of \$217.75 costs of the libelant as taxed, amounting to the aggregate sum of \$220,105.73, with interest until paid.

Fourth. Libelant is advised and insists that said final decree and said decision whereon it was rendered are erroneous in that said decree did not decree and that said decision did not adjudge that the libel filed by the libelant herein should be dismissed with costs and that said decree and decision are erroneous in that it was decided and decreed that respondent became liable for alleged losses sustained by the libelant under the policies or certificates of insurance aforesaid when said decree and decision should have adjudged and decreed that the respondent was not liable under the certificate or policies of insurance aforesaid and should have dismissed the libel filed on behalf of the libelant with costs.

Fifth. For this and manifold other reasons fully and at large set forth and appearing in its assignments of error filed herewith, re-

spondent, United States of America, appeals from said decree to the Circuit Court of Appeals for the Third Circuit and on said appeal intends to seek a new decision on the law and on the facts and on the pleadings and proofs in said District Court and prays that its appeal herein may be allowed and that the record and proceedings herein may be returned by the United States Circuit Court of Appeals for the Third Circuit and that said final decree may be reversed by said Court and that said libel filed by the libelant herein may be dismissed and that said respondent may have such other and further relief as to the Court may seem just.

Dated February 20, 1922.

Yours, &c., Walter G. Winne, United States Attorney, by  
Frederic M. P. Pearse, Assistant United States Attorney,  
Proctors for Respondent.

[fol. 179] It is ordered that the appeal herein be allowed as prayed for.

Charles F. Lynch.

Dated February 20th, 1922.

Jurat showing the foregoing was duly sworn to by M. P. Pearse omitted in printing.

[File endorsement omitted.]

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[fol. 180] IN UNITED STATES DISTRICT COURT

[Title omitted]

#### AMENDED ASSIGNMENTS OF ERROR

Now comes the respondent, United States of America, by Walter G. Winne, United States Attorney for the District of New Jersey, and Frederic M. P. Pearse, Assistant United States Attorney, and J. Frank Staley, Special Assistant to the Attorney General, proctors for the United States, and say, that in the record and proceedings herein there are manifest errors, to wit:

1. In that the Court erred in finding that the losses sustained by the libelant were due to and occasioned by the perils insured against in the policies of insurance upon which the action was founded.

2. In that the Court erred in finding as a fact:

The master informed the lieutenant, whose name was Cox, that he intended to proceed to Kirkwall by way of the Fair Island passage. Lieutenant Cox thereupon communicated with the "Virginia" by semaphore, and, as a result of instructions received by the lieutenant from the "Virginia," which were to take the ship into Kirkwall,



he, the lieutenant, directed that the vessel proceed to that port through Westray Firth.

[fol. 181] 3. In that the Court erred in finding as a fact:

The tanker arrived off Westray Firth on the night of October 30th and Lieutenant Cox, who had been instructed not to pass through the islands at night, directed that she remain off the entrance until morning. The following morning (October 31st) the course was fixed by Lieutenant Cox and the vessel began its passage into and through the Firth as directed by the lieutenant. While proceeding along near a point at the outer edge of the Skea Skerries she struck a submerged rock, broke up and became a total loss.

4. In that the Court erred in finding:

My conclusion, however, is that if the "Llama" had not been held up by this cruiser she would have proceeded to the north of the Orkneys and thence down the coast to Kirkwell where, the master testified, "it was just as safe as the Atlantic Ocean," and that the Westray passage was taken at the instigation and continued under the direction of the naval officer.

5. In that the Court erred in finding:

This conclusion is arrived at not only because the weight of the evidence seems to justify it, but also because the version of the master and third officer of the "Llama" seems to be more probable. The war between Great Britain and Germany was then in progress and German submarines were plying the open sea beyond the Fair Island channel. Although this was a neutral vessel carrying a non-contraband cargo to a neutral port, those in control of a German submarine would undoubtedly have evinced considerable interest upon discovering a neutral vessel loaded with oil in the control of a British armed crew, and it seems highly improbable that the possibilities of this submarine peril were overlooked by the young [fol. 182] lieutenant at the time the intended course into Kirkwall was discussed by him with the master. The instructions to the British officer were that he was to take the vessel to Kirkwall and, in view of the fact that the vessel intended to go to that port, these instructions really meant that he was to see that she got there. It was perfectly natural for him to decree that she would proceed via the shorter route—a route which though more dangerous from a navigation standpoint was practically free of enemy war craft.

6. In that the Court erred in finding:

There is also a conflict with respect to the activities of the lieutenant while aboard in connection with the navigation of the vessel. The master and the third officer testified that all courses were initiated by the naval lieutenant, while Lieutenant Cox testified that the courses were initiated by the ship's crew—not by him.

The lieutenant admits that either he, or one of his subordinates, was in constant touch with every movement of the vessel; that nothing was done in the way of navigation that he or they did not know about and consent to and that he was on the bridge on the morning that the vessel was being navigated through Westray just previous to her striking the submerged rock. He denies, however, that he actively participated in the setting of the course at any time while he was aboard.

7. In that the Court erred in finding:

The master and third officer, the latter no longer employed by libelant, both insist that he initiated and actively participated in the setting of all courses and that on the morning of October 31st, previous to the vessel's mishap, all maneuverings of the vessel were under the lieutenant's explicit directions. The weight of the testimony [fol. 183] and the probabilities of the situation lead me to the conclusion that the true version is that of the witnesses for the libelant.

8. In that the Court erred in holding that:

In the instant case the master testified that previous to this voyage his vessel had been boarded by boarding or prize crews; that when they came aboard they had full control over the ship and he and the crew obeyed their orders in every particular. So what do we find? A superior power backed by authority of force acting upon the master to prevent him from keeping to his plan to proceed through the open waters of the Fair Island passage—a longer voyage but clear of the hazardous waters of Westray. This lieutenant was on board as the supreme authority, with armed men to support that authority, and the statement of his decision to proceed through Westray Firth assumed the force of an order. So at the very outset, therefore, a chain of events was started by this taking at sea, arrest, restraint or detainment in consequence of hostilities, which caused directly the taking of an obviously more dangerous course than the one that would have been followed if the promoting cause had not occurred, and the course of the vessel thereafter was under the constant guidance and control of this active war officer.

9. In that the Court erred in holding that:

As in the Muller case, *supra*, there was no intervening cause breaking the causal connection between the control assumed by the "Virginia" boarding party and the loss of the ship. There was no time when the ship master was left to navigate his ship in his own way; she was lost while he was doing what he had to do.

[fol. 184] 10. In that the Court erred in holding that:

The "Llama" was all the time in the grip of the captor and of its armed representatives, whose control never ceased, but efficiently

caused the loss. After the seizure the adventure of taking the ship into Kirkwall was that of the British naval authorities, and the risk and responsibility of it was theirs.

11. In that the Court erred in holding that the loss of the "Llama:"

My conclusion is that the loss of the "Llama" and cargo proximately resulted from perils covered by the policy and that, therefore, the libellant should have a decree for the full amounts of the loss under both policies, besides interest and costs.

12. In that the Court erred in failing to find that the proximate cause of the loss of the "Llama" was a marine peril.

13. In that the Court erred in failing to find that the proximate cause of the stranding and subsequent loss of the "Llama" was a sea peril—stranding or shipwreck of the "Llama" in clear daylight upon submerged rocks.

14. In that the Court erred in failing to find that the course upon which the "Llama" was proceeding at the time of her loss had been selected by her master.

15. In that the Court erred in failing to find that the lieutenant of the British navy did not know the Westray Firth, and did not direct the master to take a course through such passage, but to the contrary, the master of the "Llama" had been through the Westray Firth, desired to proceed through such passage, to which the lieutenant made no objection.

16. In that the Court erred in failing to find that the master of the "Llama" charted the course through the Westray Firth [fol. 185] upon which the "Llama" was proceeding and that directions respecting the navigation of such course were given by the master and officers of the "Llama."

17. In that the Court erred in failing to adopt as a controlling factor that the reports of the master of the "Llama," immediately after the stranding, assigned as the reason therefor striking uncharted rocks in the Skea Skerries.

18. In that the Court erred in failing to find that at and prior to the time of the stranding the "Llama" was navigated under the direction of her own officers, who took the observations, charted the courses and directed the sailing courses.

19. In that the Court erred in entering a final decree sustaining libel.

20. In that the Court erred in failing to enter a final decree dismissing the libel.

21. In that the Court erred, in its assessment of damages in allowing interest from the date of the loss.

22. In that the Court erred in not finding that as a libel was filed May 12, 1919, almost four years after the disaster, interest upon the loss must be denied.

23. In that the Court erred in allowing as part of its decree interest in any amount.

24. In that the Court erred in allowing, as part of its decree, an allowance for expenses incurred in suing, laboring, and traveling for, in and about the defense, etc., of the S. S. "Llama" and her freight.

Walter G. Winne, United States Attorney. Frederic M. P. Pearse, Assistant United States Attorney. J. Frank Staley, Special Assistant to the Attorney General in Admiralty.

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[fol. 186] CITATION—In usual form, showing service on Kirlin, Woolsey et al.; omitted in printing

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[fol. 187] IN UNITED STATES DISTRICT COURT

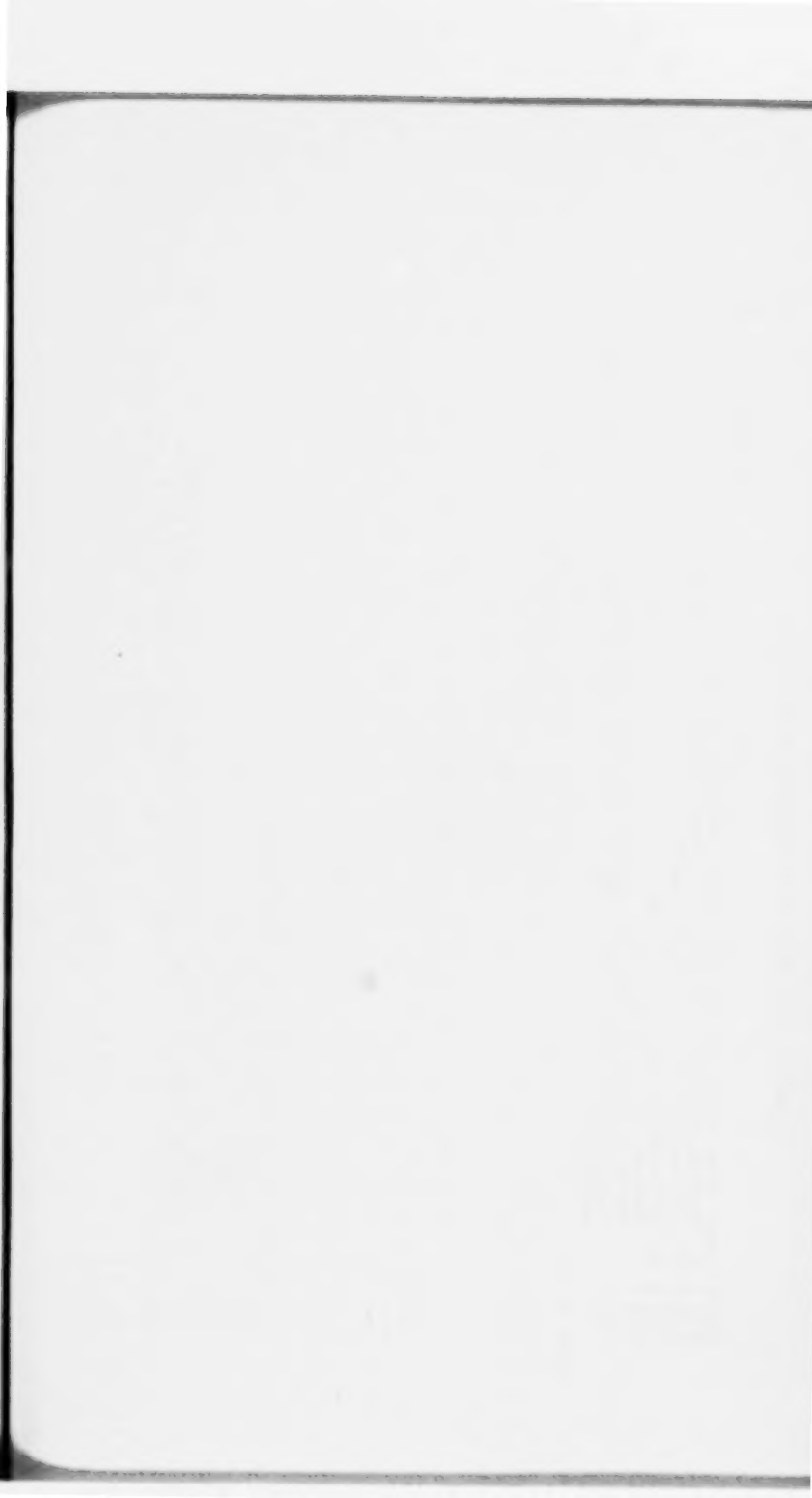
[Title omitted]

LIBELANT'S EXHIBIT 2—Filed July 30, 1921

Steamship Log Book, in Civil Time, of the Steamship Llama, Voy. No. 6, Tho. E. Clinch, Master

[File endorsement omitted.]

(Here follows reproduction of log book, marked side folio pages 188-208, inc.)



## Exhibit L. 2.

## Journal from New York towards Copenhagen

Remarks—10th day of Oct. 1915, Sunday

This day began partly cloudy with fresh NW breeze. Barometer reading 30.03.  
 11.00 A. M. Tugboats Dalzelline, W. F. Dalzell and Fred B. Dalzell came alongside.  
 11.05 " " Left Van Brunt St. Blyn., ass. by tug-boats.  
 12.30 P. M. Arrived at Pier #6, Constable Hook.  
 12.40 " " Tug-boats left. Ship made fast.  
 2.00 " " Started to pump out ballast from #4 tank and finished pumping at 7.15.  
 6.00 " " Night watchman came on board. This day ended with moderate Westerly breeze. Barometer reading 30.15.

## Officer on Watch

A. Ricca, 1st Officer  
 J. W. Fleming, 2nd " "  
 C. Jensen, 3rd " "

## Men on Look Out

Alex Shold	Boatswain
J. Aarre	Sailor
J. Christofersen	"
A. Arold	"
A. Limberg	"
J. Fernandez	"
C. M. Nielsen	"
	Master

A. RICCA, Chief Officer.

## Journal from New York towards Copenhagen

Remarks—11th day of Oct. 1915, Monday

This day began fine and clear with light Westerly breeze. Bar. reading 30.25.  
 Crew employed taking on board ship's stores and general ship's duty.  
 9.20 A. M. Started to load oil in all tanks.  
 9.30 " " Started to take in coal and water.  
 5.00 P. M. Crew left off work for the day.  
 6.00 " " Night watchman came on duty, all lights attended to and 1st officer on night duty.  
 This day ended with light Westerly breeze, weath 3r fine and clear. Bar. reading 30.27.

Master

A. RICCA, Chief Officer.

## Exhibit L. 2.

## Journal from New York towards Copenhagen

Day began with light Westerly breeze, weather fine and clear. Bar. reading 30.30. Remarks—12th day of Oct. 1915, Tuesday.

5.00 A. M. Finished loading oil. Crew employed taking on ship's stores and general ship's duty.

10.00 " " Tugboat S. T. #15 & 17 came alongside.

10.05 " " Left Oil Dock ass. by tugboats.

10.55 " " Anchored off Thompkinsville with coal barge alongside.

11.00 " " Resumed coaling ship.

1.00 P. M. Crew employed getting ship ready for sea.

6.15 P. M. Finished coaling ship.

Draught—Forward 25.6; Aft 26.11.

At sundown anchor lights attended to and regular anchor watches kept through the night.

A. RICCA, Chief Officer. Master

## Journal from New York towards Copenhagen Via Kirkwall

This day began calm and foggy. Bar reading 30.10. Remarks—13th day of Oct. 1915, Wednesday.

7.00 A. M. Crew employed getting ship ready for sea and general ship's duty.

2.30 P. M. Pilot came on board and shifted anchor barge. Ship delayed sailing on account of further repairs in Engineer's Dept. At sundown anchor lights attended to and sea watches kept through the night.

11.45 " " Stand by Eng. telegraph.

11.50 " " Started to heave up anchor.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Limberg	12	4	2	
A. Ricca	4	8	Harold	4	8		
C. Jensen	8	12	C. M. Nielsen	8	12		Coal on Hand
J. W. Fleming	12	4	J. Fernandez	12	4		Leaving
A. Ricca	4	8	Christofersen	4	8		New York
C. Jensen	8	12	J. Aarre	8	12		684 tons
A. RICCA, Chief Officer.				Master			







## Exhibit L. 2.

## Journal from New York towards Copenhagen Via Kirkwall

H	K	Tanths	Courses	Winds	Force	Currents	Thermometer Air Water	Barometer	Deviation Compass	16th day of Oct. 1915 Saturday	Remarks
A. M.	1										
2											
3											
4	390	22	N 80° E	ENE	7		62	30.13			2.30 Eng half speed ahead shipping heavy water fore & aft. Mod ENE gale, overcast & local rain.
5											
6											
7											
8	394	4	N 80° E	ENE	7		62	30.22			Overcast & cloudy, mod ENE gale, high running seas. Vessel shipping heavy seas fore and aft.
9											
10											
11											
12	409	15	N 80° E	ENE	6		64	30.23			10.15 Eng full speed ahead. Strong ENE breeze, partly cloudy, high running seas.
						Running time 23h 46m.		A. S. 7.3.			
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.											
Noon			N 65° E	142	174				N 41° 41		W 64° 17
1											
2											
3											
4	430	21	N 80° E	ENE	6		56	30.20			2.30 Passed Br Ship Claverdon Lat 41° 49' N. Long 63° 51' W. Fresh ENE breeze, rough sea, clear with passing clouds.
5			N 87° E								
6											
7											
8	464	34	N 87° E	ENE	4		52	30.20			5.50 c/e S. C. N 87° E. Fresh to mod ENE breeze & rough sea, clear with passing clouds.
9											
10											
11											
P.M. 12	481	17	N 87° E	NE	3		54	30.15			Moderate to gentle ENE to NE breeze, clear with passing clouds, mod sea.
Officer on Watch											
J. W. Fleming		12		4	Aarre	12	4	5			
A. Ricca		4		8	J. Christoffersen	8	12	0			24 tons
C. Jensen		8		12	J. Fernandez	12	4	0			Coal on Hand
J. W. Fleming		12		4	C. M. Nielsen	4	8	5			
A. Ricca		4		8	Harold	8	12	5			620 tons
C. Jensen		8		12	Limborg	12	5				
A. RICCA, Chief Officer.											
Master.											



*Exhibit L. 2.*

# Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses	Winds	Force	Currents	Thermometer Air Water	Barometer	Deviation Compass	Remarks 18th day of Oct. 1915 Monday
A.M.	1									
	2									
	3									
	4	687	N 87° E	N NE	6		50	30.05		Fine & clear, strong N NE breeze, rough beam sea. Vessel shipping heavy seas.
	5									
	6									
	7									
	8	716	N 70° E	N NE	6		52	30.15		7.45 c/e S. C. N 70° E. Weather & wind remain the same as in the preceding watch.
	9									
	10									
	11		S 73° E	"						
	12	746	30	North	4		56	30.20		10.55 c/e S. C. S 73° E. Clear with passing clouds & rough north- erly seas.  Running time 23h 43m. A. S. 8.6.

Var.	Course	Dist.by Log	Dist.by Obs.	Dif. of Lat.	Departure	Lat.by D.R.	Lat.by Obs.	Dif. of Long.	Long.by D. R.	Long. by Obs.
Noon	N 88° E	194	204			N 44° 01'	N 55° 46'		W 55° 46'	

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	Moderate	to fresh NW breeze,
	rough sea.	Clear to overcast and cloudy.
	7.00 c/e	(S. C.) N 75° E. Weather overcast & cloudy, fresh NW breeze rough sea. Vessel shipping heavy water fore and aft.
	Overcast &	cloudy, fresh NW to WNW breeze, rough sea & heavy N'ly swell.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	J. Christoffersen	12	4	5	
A. Ricca	4	8	J. Fernandez	4	8	5	26 tons
C. Jensen	8	12	A. Limberg	8	12	0	
J. W. Fleming	12	4	J. Aarre	12	4	0	Coal on Hand
A. Ricca	4	8	C. M. Nielsen	4	8	5	
C. Jensen	8	12	Hareld	8	12	5	542 tons
A. Ricca, Chief Officer.			Master.				









## Exhibit L. 2.

## Journal from New York towards Copenhagen Via Kirkwall

H	K	Ynths	Courses	Winds	Force	Currents	Thermometer Air	Water	Barometer	Deviation Compass	23rd day Oct.	Remarks of Oct. Saturday
A. M.	1											
	2											
	3											
	4	1631	31	N 82° E	SSW	4	48		29.68			Moderate SSW breeze & light local rain, mod N'ly swell. Overcast & cloudy.
	5											
	6											
	7											
	8	1663	32	N 82° E	SSW	5	46		29.64			Overcast & rain throughout the watch, mod to fresh SSW breeze & mod NW'ly swell.
	9											
	10			N 84° E								
	11											
	12	1692	29	N 84° E	South	5	49		29.60			9.30 e/e S. C. N 84° E. Fresh var. southerly breeze & mod NW'ly swell.
						Running time 23h 44m.	A. S. 8. knots.					
V. Course Dist. by Log Dist. by Obs. Diff. e/ Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs. W 37° 11'												
N 52° E 185 189 N 53° 57'												
1												
2												
3												
4	1725	33		South	4	50			29.61			Mod southerly breeze, overcast & misty & mod N'ly swell.
5												
6												
7												
8	1758	33		Variable	2	52			29.64			5.30 e/e S. C. N 87° E Overcast & misty to fine & clear, light var SSW'ly breeze & mod sea.
9												
10												
11												
P. M.	12	1792	34	SSW	2	51			29.62			Light SSW breeze, clear to partly cloudy, moderate SW'ly broken sea.
Officer on Watch												
J. W. Fleming		12										
A. Ricca		4		A. Limberg		12						
C. Jensen		8		A. Arold		4						
J. W. Fleming		12		J. Fernandez		8						25 tons
A. Ricca		4		J. Aarre		12						
C. Jensen		8		Christofersen		4						Coal on hand
A. Ricca, Chief Officer.				C. M. Nielsen		8						438
				Master.		12						





## Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses	Winds	Force	Current	Thermometer Air Water	Barometer	Deviation Compass	26th day of Oct. 1915 Tuesday	Remarks
A. M. 1											
2											
3											
4	2202	32	Ex S $\frac{1}{2}$ S	NW	4		54	30.13			Mod NW breeze, heavy southerly swell, clear with passing clouds.
5											
6											
7											
8	2234	32	Ex S $\frac{1}{2}$ S	NW	3		54	30.17			Weather remains the same as in the preceding watch.
9											
10											
11											
12	2264	30	Ex S $\frac{1}{2}$ S	NW	3		55	30.17			Gentle NW'ly breeze, cloudy & overcast, mod Southerly swell.
Running time 23h 34m. A. S. 8.9 knots.											
Var. Course Dist. by Log Dist. D. R. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs. W 21° 39'											
Noon N 77° E 180 211 N 84° 18'											
1											
2											
3											
4	2296	32	Ex S $\frac{1}{2}$ S	NNE	4		53	30.12			Mod NW to NNE breeze, cloudy & overcast, moderate Southerly swell
5											
6											
7											
8	2328	32	Ex S $\frac{1}{2}$ S	NNE	4		52	30.02			Overcast, mod NNE breeze & mod NE'ly sea.
9											
10											
11											
P. M. 12	2361	33	Ex S $\frac{1}{2}$ S	Variable	4		53	29.82			Overcast, light local rain, moderate var. NE to SE breeze & moderate sea.
Officer on Watch											
J. W. Fleming		12		4	C. M. Nielsen		12	4	5		
A. Ricca		4		8	Christofersen		4	8	5		
C. Jensen		3		12	J. Aarre		8	12	0		
J. W. Fleming		12		4	Fernandez		12	4	0		Coal on Hand
A. Ricca		4		8	Harold		4	8	5		
C. Jensen		8		12	A. Limberg		8	12	5		
A. RICCA, Chief Officer.											
Master.											

H	K	Tenths	Course	Winds	Force	Currents	Thermometer Air	Water	Barometer	Deviation Compass	27th day Oct. 1915 Wednesday	Remarks
A.M.	1											
	2											
	3											
	4	2395	34	E x S $\frac{1}{2}$ S	SE	6	54		29.60			Fresh to strong NE breeze, rough sea, weather overcast & hazy.
	5											
	6											
	7											
	8	2428	34	E x S $\frac{1}{2}$ S	SE	6	53		29.42			Overcast, heavy rain, strong SE'ly wind & rough sea.
	9											
	10											
	11											
	12	2461	33	E x S $\frac{1}{2}$ S	SE	7	53		29.25			Strong to moderate SE gale. Vessel laboring heavily taking water fore and aft.
						Running time 23h 37m.			A. S. 8. knots.			
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.												
		Noon	N 80° E	189	189							16° 49'
									58° 50'			

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	A. Limberg	12	4	5	
A. Ricca	4	8	Harold	4	8	5	25 tons
C. Jensen	8	12	Fernandez	8	12	0	
J. W. Fleming	12	4	J. Aarre	12	4	0	Coal on Hand
A. Ricca	4	8	Christofersen	4	8	5	
C. Jensen	8	12	C. M. Nielsen	8	12	5	334 tons
A. RICCA, Chief Officer.			Master.				



*Exhibit L. 2.*

**Journal from New York towards Copenhagen Via Kirkwall**

M	K	Tenths	Course	Winds	Force	Currents	Thermometer Air	Thermometer Water	Barometer	Deviation Compass	25th day of Oct., 1915 Thursday	Remarks
A. M.	1								28.65			Strong to fresh SE to S SE gale.
	2								28.65			Overcast & cloudy and heavy.
	3								28.44			Local rain squall and high run-
	4	2498	S 63° E	S, SE	8		53		28.63			ning seas.
	5								28.63			
	6								28.63			
	7								28.65			Fresh to strong S SE gale, high
	8	2506	Various	S SE	9		53		28.60			seas. Vessel laboring heavily.
	9								28.60			6.30 Eng slow ahead hoove ship
	10								28.58			to wind. Vessel shipping heavy
	11	Lost							28.58			seas at midships.
	12	Rotator	Various	S SE	8		53		28.60			9.15 Slightly moderating Eng aft
									28.60			speed ahead.
												Running time 25h 47m. A. S. 4.3.

Var.	Course	Dist.by	Log	Dist.by	Obs.	Diff. of	Lat.	Departure	Lat.by	D.R.	Long.	by	Obs.
							N 79° E				W		
			47	101							89.08		12.36

[illegible]





## Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Course	Winds	Force	Currents	Thermometer Air Water	Barometer	Deviation Compass	31st day of Oct. 1915 Sunday	Remarks
A. M.	1	No log out	S 56° E						1.00 c/e S. C. S 56° E		Steering
2			"						Comp. SE 1/4 S.		
3			"						Fresh breeze, clear with passing clouds & moderate sea.		
4			S 44° E	South	5	52		29.72	6.00 Eng. all speed ahead.		
5									6.30 Stopped Eng.		
6									6.40 c/e S. C. S 44° E.		Eng. full
7			Various	South	4			29.73	speed ahead.		
8			S 85° E			50			6.50 Noup Head S SW.		
9											

9.07 Struck a reef in Westray Firth. Engine reversed full speed astern. Ordered all hands to clear away the boats. Sounded at midships and found 5 fathoms water. Forward 2 1/2 fathoms. Aft 5 1/4 fathoms. 10.05 A. M. Started to pump out #1 tank by captain's orders. 10.10 British torpedo boat came out for assistance. 10.55 Torpedo boat took hauser. 11.00 A. M. Eng. full astern and torpedo boat pulling. 11.10 hauser parted. 11.15 British torpedo boat came out and put wire hauser on board. 11.24 Engine full astern. 11.26 wire parted and fouled propeller. Stopped engine immediately. 12.25 Tug Plover came alongside. 12.45 Tug took line and attempted to pull ship off, paring three (3) rocks. 1.30 Electric fuse took fire in forward tween-deck and depth tank and vessel pounding very heavy on hands ready to abandon ship. 3.30 Ship fast on the rocks pounding heavily and listing to port side. 4.00 Captain gave orders to abandon ship and all hands in boats, except Captain, Chief Officer, Chief Eng., 2nd Asst. Eng., 1st Asst. Eng., Wireless and one sailor. 4.10 Bt. Captain orders boats and crew with Chief Officer in charge pulled alongside of Tug Plover and proceeded to Kirkwall. 5.00 P. M. Ship being in danger, Captain, second mate, Chief Eng., 1 Asst. Eng., Wireless operator and Seaman Christoffersen left ship and went on board Petrol boats "Evening Star" and stood by all night.

Ship stranded in Westray Firth.

9.00 A. M. ship crew standing by on the Petrol Boat "Evening Star" returned to ship. 9.30 A. M. British trawlers Britanic and Daisy came alongside and with Tug Gloria astern made attempt to pull ship off the rocks. All hands came back on board the ship at 2.30 A. M. 10.00 A. M. Captain gave order to open all valves to let oil run down to sea level. 3.00 P. M. Tug Plover took line. 3.05 Line parted. 3.40 Tug Plover put towing hauser on Llama stern. 3.50 hauser parted. 3.40 Oil leaking into fire room, having fire in donkey boiler ship was in great danger. 2nd Asst. Eng. managed to pull fire out, extinguishing same before leaving ship. 5.00 P. M. All hands left ship, except Chief Officer, standing by on the Petrol boat "Evening Star".

Weather clear with passing clouds, fresh variable SE to NW breeze. All Llama's crew except Chief Officer, Chief Eng., 1st and 2nd Asst. Eng., 2nd Mate and Wireless operator were paid off and in charge of American Consul.

Remarks—1st day of Nov. 1915, Monday.

*Exhibit L. 2.*

Remarks—2nd day of Nov. 1915. Tuesday.

Day began with fresh NW breeze.  
Weather fine and clear.

Ship still in same position. Water inside rising and filling with the tide.

At 12:00 A. M. British Naval Commander came on Board Llama to have a survey, took sounding all around ship and declared no possible chance of getting Llama off the rocks, and so all attempt of getting "Llama" off the rocks where left off.

Remarks—3rd day of Nov., 1915. Wednesday.

Ship still in same position, no other attempt where made to get Llama off the Rocks. Commander Necker-son gave Captain Clinch orders to send the remain of the Llama's crew, except En & Mate, to the United States.



## Exhibit L. 3.

## Journal from Stockholm towards Copenhagen

H	K	Tenths	Courses	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	Remarks 13th day of Aug. 1915
---	---	--------	---------	----------	-------	--------------------------	-----------	----------------------	----------------------------------

A. M. 1

2

3

4

5

6

7

8

9

10

11

12

This day began fine & clear with gentle NE breeze.  
Crew employed in general ship work & pumping ship for sea from  
7 A. M. to 12 A. M.

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.  
Noon

1

2

3

4

5

6

7

8

9

10

11

12

P. M.

12

39

SW x S

S  $\frac{3}{4}$  W

NE

66

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

2 P. M. Tug Greb came alongside with ship's provisions. 2.42  
Stand by Eng.

2.50. Let go lines frd & aft & started to heave up anchor. 3.35  
Anchor up & turned ship around ass. by tug-boat & proceeded down  
channel with pilot on board.

6.19. Stand by Eng. 6.43 Stopped Eng. & arrived at Sandham &  
exchanged pilot. 7.15. Grönskar Light abeam. Landed river pilot &  
proceeded to sea with Danish pilot on board

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

30.00

Light NE wind, fine & clear.  
8.03 Alma grounded L. V. abm.  $\frac{1}{4}$ '  
off. 10.00 Hufrendskar Lt. abm.  $\frac{3}{4}$ '  
off. Gentle breeze, smooth sea.

Officer on Watch From To Men on Look Out From To Lights Exhibited Running Anchor Coal Consumed

F. L. Sears 8 12 Byonness 8 12 5 Coal on Hand  
J. W. Fleming 12 4  
A. Ricca 4 8 4 5  
A. Ricca, Chief Officer. 4 8 5 0



## Exhibit L. 3.

## Voyage #5. Journal from Stockholm towards Copenhagen

H	K	Tenths	Courses Standard	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	14th day of Aug. 1915 Saturday	Remarks
A.M. 1										
2										
3										
4.30	78		SW x S SW x S ½ S ¼ W		East	65	29.99			Light Easterly breeze, fine and clear, smooth sea.
5										
6										
7	118									
8			SW x S		NE	66	29.96			4.20 c/c S. C. S W x S ½ S Similar weather as preceding watch.
9										8.45 A.M. Oland N. Pt. Lt. abeam 11m. off.
a/c 10.18										9.00 A.M. Advanced clocks 4 min. Light breeze, smooth sea, fine & clear weather.
11										
12	152	34		South	ESE	68	29.94			
					Running time 15h. 53'. A. S. 10.0.					
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
1		152	153							
2										
3										12.00 Noon. Kapell L. H. abeam 4m. off.
c/c 4	195	42	SW x W SW x W ¼ W		ENE	67	29.92			2.55 Segerstad L. H. abeam 4 miles off. Mod. breeze, smooth sea, partly cloudy.
5										
6										
7										
8	235	40	SW x W ¼ W		ENE	66	29.89			4.24 Oland L. H. abeam 5' off. Fine & clear, light ENE breeze & smooth sea.
9										Mod. breeze, smooth sea. Fine & clear weather.
10										
11										
P.M. 12	273	38	W x S ¾ S		Easterly	63	29.86			
Officer on Watch										
J. W. Fleming			From 12	To 4	Men on Look Out	From 12	To 4	Lights Exhibited Running Anchor	Coal Consumed	
A. Ricca					Petersen					
F. L. Sears			4	8		4	8	5		
J. W. Fleming			8	12		8	12	0		25 tons
A. Ricca			12	4		12	4	0		Coal on Hand
F. L. Sears			4	8		4	8	0		
A. Ricca, Chief Officer.			8	12	Clinch	8	12	5		73 tons

## Exhibit L. 3.

## Voyage #5. Journal from Stockholm towards Copenhagen

M	K	Tenths	Courses Standard	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	16th day of August, 1915	Remarks
A. M. 1			W ½ S	W ¼ S				12.00	Midnight	Hammer Pt. Stab
2								3m. off.		
3								2.30 c/e	Stand Comp. W ½ N.	
4	313	40	W ¼ N	W x N	E NE	62	29.83	Mod. breeze, smooth sea, partly cloudy.		
5			Various	"	"			7.25	Hauled in log. reading 348.	
6			"	"	"				Clear with passing clouds, mod. to fresh East breeze & mod. sea.	
7			"	"	"				8.12 Ordered stopped by German Torpedo Boat. 8.18 Allowed to proceed.	
8	—	—			East	60	29.80		8.59 Passed Drogden L. V. 10.53 Stand by engines. 11.02 Stop for Pilot.	
9									Running time 23h. 51m. A. S. 10.12.	
10										
11										
12										

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure La. by D.R. Lat. by Obs. D. R. of Long. Long. by D. R. Long. by Obs.

243

12.09 Noon Passed in by Breakwater. 12.14 Stopped engines.  
 12.24 Ledges to Coal Dock fore & aft.  
 12.26 Running off engines Ship fast fore & aft to Dock.

Draft For. 11.00 ft.  
 " Aft 19.00 ft.  
 1.35 P. M. Commenced coaling ship.  
 10.00 P. M. Finished coaling.

Draft Forward 14 ft. Aft 22 ft. 2 in.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running, Anchor	Coal Consumed
J. W. Fleming	12	4	Byonness	12	8	5	27 tons
A. Ricca	4	8		4	8		
	8	12		8	12		
	12	4		12	4		Coal on Hand
	4	8		4	8		
	8	12		8	12		46 tons

A. Ricca, Chief Officer







## Exhibit L. 3.

## Voyage #5. Journal from Copenhagen towards New York

H	K	Courses Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 19th day of August, 1918
A. M. 1								
2								
3								
4								
5								
6								
7								
8								
9.15								
9.22								
10								
11								
12								
Var. Courses Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. D. R. of Long. Long. by D. R. Long. by Obs.								
Noon N 67° W 192° 59' 02"								
1								
2								
3								
4								
5								
6.10								
7								
8								
9								
10								
11.30								
P. M. 12								
Officer on Watch								
J. W. Fleming								
A. Ricca								
F. L. Sears								
J. W. Fleming								
A. Ricca								
F. L. Sears								

## Exhibit L. 3.

## Voyage #5. Journal from Copenhagen towards New York

M	K	Courses	Steering	Winds	Force	Thermometer	Barometer	Deviation	Remarks
A. M.	1	Ten	Standard			Air		Compass	20th day of August, 1915
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.									
Noon Var. 209 53° 49'									
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
P.M. 12									
Officer on Watch									
J. W. Fleming	From	To	Men on	Look	Out	From	To	Lights	Coal
	12	4	Petersen			12	4	Running	Exhibited
F. L. Sears	4	8	Alvarez			4	8	Anchor	Consumed
J. W. Fleming	8	12				8	12		
A. Roca	12	4				12	4		
F. L. Sears	4	8				4	8		
	8	12	Clinch			8	12		

Fresh breeze, moderate sea, overcast, passing rain squalls.

6.00 c/r S. C. N 72° W Steering log N W ¼ W. Similar weather as in the preceding watch.

9 A. M. Retarded clocks 24 min. Fresh breeze, mod. to rough sea. Cloudy to overcast.

29.88  
Average speed 8.56.

12.00 c/r Standard Comp. N 75° W.

Fresh breeze, mod. sea, cloudy. 5.45 in Lat. 59° 43'. Long. 8° 52'.

Passed drifting mine, appears two together, one black & one red. 6.00 c/r S. C. N 60° W.

Similar weather preceding. Mod. breeze & sea. Cloudy.

12 Midnight Ordered stopped by Br. Cruiser. 12.00 Stopped engines.

27 tons  
Coal on Hand  
520 tons



## Exhibit I. 3.

## Voyage #5. Journal from Copenhagen towards New York.

Midnight s/o 24.75 W Standard.

H	K	Course Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	21st day of August, 1915	Remarks
A. M. 1		N 75° W							12.35 Naval officer came aboard.	
2									1.15 Officer left ship. Ship waiting	
3									for signal from cruiser. 2.10 Slow	
4		N 75° W	W x N $\frac{1}{2}$ N	NW	4	56	30.04		ahead. 2.39 Full speed ahead.	
5									Mod. breeze, gentle NW swell,	
6									overcast, rain at times.	
7									Overcast & cloudy, mod. NW	
8		N 75° W	W NW	NW	4	58	30.05		breeze & mod. sea, local rain squalls.	
9									9 A. M. Retarded clocks 23 min.	
10									Fresh breeze. Mod. sea. Overcast.	
11		N 75° W	NW x W $\frac{1}{2}$ W	West	5	59	30.02		Light rain at times.	
12			Running time 23h. 12m.				A. S. 8.4.			
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
		184		59° 23'		59° 23'		13° 55'		
1										
2										
3										
4.30		N 75° W	NW x W $\frac{1}{2}$ W	N NW	5	58	29.98		Fresh breeze, mod. sea, overcast,	
5									rain.	
6										
7										
8		N 80° W	W NW	West	5	58	29.95		4.30 c/c S. C. N 80° W. Steering	
9									Comp. W NW. Overcast & cloudy.	
10									Fresh West breeze and mod. sea.	
11									Fresh breeze, mod. sea. Cloudy	
12		N 80° W	W NW	WNW	5	57	29.95		to partly clear.	
P. M. 13										

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Alvarez	12	4	5	
A. Ricca	4	8		4	8	5	28 tons
F. L. Sears	8	12		8	12	0	Coal on Hand
J. W. Fleming	12	4		12	4	0	
A. Ricca	4	8		4	8	5	492 tons
F. L. Sears	8	12	Byonesse	8	12	5	



**Exhibit L. 3.**

## Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths	Courses Standard	Steering	Winds Force	Air Water Thermometer	Barometer	Deviation Compass	23rd day of August, 1915	Remarks
A. M.	1									
	2									
	3									
	4		N 82° W	West ½ N	West'y 3 58		29.87			Light breeze, heavy NW swell,
	5									overcast.
	6									
	7									
	8		N 82° W N 78° W	West ½ N WNW	West'y 4 58		29.85			Similar weather as in the preceding watch.
P. M.	9	18								
	10									9 A. M. Retarded clocks 21 min.
	11									Fresh breeze. Rough sea. Clear weather.
	12		N 78° W	W NW	West 5 59 Running time 24h. 20m.		29.88			
							A. S. 7.1.			
<hr/>										
Var. Course Dist. by Log				Dist. by Obs.		Lat. by D.R.		Long. by D. R.		Long. by Obs.
Noon S 87½				175		N 51° 26'		W 23° 39'		

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Eyonnass	12	4	5	
A. Ricca	4	8		4	8	5	29 tons
P. L. Sears	8	12		8	12	0	
J. W. Fleming	12	4		12	4	0	Coal on Hand
A. Ricca	4	8		4	8	5	
P. L. Sears	8	12	Sam Ware	8	12	5	434





[illegible]





## Exhibit L. 3.

## Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 28th day of August, 1915
A. M.	1								
	2								
	3								
	4								
	5								
	6								
	7								
	a/c 8								
	9								
	10								
	11								
	12								
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs. W 47° 13'									
Noon	S 53½° W	204							
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
P.M.									
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
Officer on Watch									
J. W. Fleming	From	To	Men on	Look	Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
A. Ricca	12	4	Clinch			12	4	5	30 tons
F. L. Sears	4	8				4	8	5	
J. W. Fleming	8	12				8	12	0	
A. Ricca	12	4				12	4	0	Coal on Hand
F. L. Sears	4	8				4	8	5	
	8	12	Nyberg			8	12	5	274 tons

## Exhibit L. 3.

## Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 29th day of August, 1815
A. M. 1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
P. M. 12										
Var. Course, Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
1										
2										
3										
4										
5										
6.20										
7										
8										
9										
10										
11										
P. M. 12.										
Officer on Watch										
J. W. Fleming	From	To	Men on	Lock	Out	From	To	Lights Running	Exhibited Anchors	Coal Consumed
A. Rica	12	4	Byonness			12	4	5		
P. L. Sears	4	8				4	8	5		
J. W. Fleming	8	12				8	12	0		30 tons
A. Rica	12	4				12	4	0		Coal on Hand
P. L. Sears	4	8				4	8	5		
	8	12	Sam Ware			8	12	5		246



## Exhibit L. 3.

## Voyage #5. Journal from Copenhagen towards New York

H A. M.	K. Tenth Standard	Course	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	Remarks 1st day of August, 1918
1								Mod. breeze, smooth sea, thick fog.
2								
3								
4		N 80° W	W x S $\frac{1}{2}$ S	S SW	60	29.98		5.00 Took sounding 75 fathoms water.
5		S 80° W	S W x W					5.45 Took sounding 56 fathoms water.
6								
7		S 80° W	S W x W	S SW	64	29.97		6.00 c/c S. C. S 80° W.
8								Similar weather preceding.
9								9 A. M. Retarded clocks 20m.
10								Mod. breeze. Smooth sea. Thick fog all watch.
11		S 80° W	S W x W	S SW	65	29.96		
12				Running time 24th. 30m.	Speed 9 knots.			
Var. Course Dist. by Log Dist. by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.								
Noun Various 219 43 44 81° 50								
1								
2								
3								
4		S 80° W	S W x W $\frac{1}{2}$ W	S SW	65	29.93		Mod breeze, smooth sea, overcast & misty.
5								
6								
7								
8		S 80° W	S W x W $\frac{1}{2}$ W	S W	64	29.93		Overcast & cloudy, mod. variable S W to S W breeze. Smooth sea, local rain squalls.
9								
10								
11								
12		S 80° W	S W x W $\frac{1}{2}$ W	West	66	29.93		Light breeze, smooth sea. Thick fog most of watch.
P.M. 12								
Officer on Watch								
		From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming		12	4	Ware	12	4	5	
		4	8		4	8	5	
P. L. Sears		8	12		8	12	0	25 tons
J. W. Fleming		12	4		12	4	0	
		4	8		4	8	5	Coal on Hand
P. L. Sears		8	12	Alvarez	8	12	5	190 tons





## Exhibit L. 3.

## Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths	Course Standard	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	Remarks 3rd day of September, 1915
A. M.	1								
	2								12.25 Fire Island L. V. abeam $2\frac{1}{4}$
	3								mi. off. 3.20 Half speed. 3.25
	4								Stopped for Pilot. 3.45 Pilot aboard
	5								and full speed ahead.
	6								Light breeze, smooth sea, clear.
	7								
	8								
	9								
	10								
	11								
	12								

Draft arriving at anchor—For 9 ft. 00 in.; Aft 17 ft. 06 in.

Var.	Course	Dist. by Log	Dist. by Obs.	Diff. of Lat.	Departure Lat. by D.R.	Lat. by Obs.	Diff. of Long.	Long. by D. R.	Long. by Obs.
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
P. M.	12								

7.07 Doctor cleared ship & stand by engine. S. T. Co. #20 alongside.  
 7.16 Start heave up anchor.  
 7.24 S. T. Co. #16 alongside.  
 7.31 Anchor up & proceeded full ahead.  
 9.05 Fast alongside Pier ft. of Van Brunt St., Bklyn & ring off engine.  
 Assisted to Deck by above tugs.  
 4.00 P. M. Started to steam tanks Nos. 1, 2, 3.  
 Day ends clear, with light Easterly breeze. Night watchman on duty  
 and lights attended to. Midnight finished steaming tanks Nos. 1, 2, & 3.  
 Started other tanks.

Officer on Watch	From	To	Men on	Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	4	Clinch	12	4	5	
	4	8			4	8	5	

Saturday, Sept. 4, 1915.

At Dock ft. of Van Brunt St.  
 Day begins misty with light Westerly breeze. Bar 30.00. Crew employed washing tanks.  
 The day ends clear with light Westerly breeze. Lights attended to and night watchman on duty.

Sunday, Sept. 5, 1915.

At Dock foot of Van Brunt St.  
The day begins overcast & misty. Bar 29.35.  
6.00 to 8.00 A. M. Crew employed bailing water out of spare bunker on stbd side.  
The day ends partly cloudy with light S Easterly breeze. Lights attended to and night watchman on duty.

Monday, Sept. 6th, 1915.

The day began light Westerly breeze, fine & clear. Crew refused to turn it being Labor Day. Boatwain & pumpman started to wash down tank at 9 A. M. and finished at 5 P. M.  
6 P. M. Night watchman came on duty for the night. This day ends with light Westerly breeze. Bar 29.94.

Tuesday, Sept. 7th, 1915.

The day begins, calm, overcast & misty.  
P. M. Started to put water in tank #1. Pumps would not work, put water in from top of tank by means of hose.  
The day ends cloudy, light Southerly breeze.  
6 P. M. Night watchman on duty, also watchman from Atlantic Basin.

Wednesday, Sept. 8th, 1915.

The day begins overcast with light SE breeze, Bar 29.93. Crew employed various ship duties.  
9.20 A. M. Left Dock at Van Brunt St. 10.10 A. M. Arrived at Crane's Drydock. Towboats S. T. Ca. #5, 14, 19.  
6 P. M. Night watchman came on duty. The day ends clear & fine, light Southerly breeze.

Thursday, Sept. 9th, 1915.

The day begins fine & clear, light SW breeze, Bar 29.99. Ship on Crane's Drydock. Crew employed in various ship duties.  
The day ends fine & clear, light Westerly breeze. Bar 29.94.

Friday, Sept. 10th, 1915.

The day begins fine & clear, light NNE breeze, Bar 29.80. Ship still on Crane's Drydock. 7.45 A. M. Started to let water into the Drydock. 10.40 Towboats Fred B. Dalseg, Jr., C. P. Raymond and W. F. Dalseg along side. 12.00 Made fast alongside SS. Petrolite at dock ft. of Van Brunt St.  
The day ends fine & clear, light Easterly breeze. Bar 29.80. 6 P. M. Night watchman came on duty.

Saturday, Sept. 11th, 1915

The day begins calm & clear. Bar 29.75.  
7 A. M. SS. Petrolite left. Made fast to dock.  
The day ends clear with light S SE breeze. Bar 29.75. 6.00 P. M. Night watchman came on duty.



## Exhibit L. 3.

Sunday, Sept. 12th, 1915.  
The day begins fine & clear, light Southerly breeze. Bar 29.80. Similar weather all day.  
6.00 P. M. Night watchman came on duty.

Monday, Sept. 13th, 1915.  
The day begins overcast & cloudy, light Westerly breeze. Bar 30.00.  
The day ends fine & clear, light Westerly breeze. Bar 30.05.  
6.00 P. M. Night watchman came on duty.

Tuesday, Sept. 14, 1915.  
The day begins overcast, light SW alra. Bar 30.06.  
6.00 Night watchman came on duty. The day ends fine & clear, light Westerly breeze. Bar 30.08.

Wednesday, Sept. 15, 1915.  
The day begins overcast & misty, light Westerly alra. Bar 30.12.  
6.00 Night watchman came on duty. The day ends fine & clear, light Westerly breeze. Bar 30.12.

Thursday, Sept. 16, 1915.  
The day begins fine & clear with light NW breeze. Bar 30.14  
8. A. M. SS. Rappahannock tied up alongside.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, light Westerly breeze.

Friday, Sept. 17, 1915.  
The day begins fine & clear, light SW breeze. Bar 30.09.  
6.00 P. M. Night watchman came on duty. The day ends cloudy, light Westerly breeze.

Saturday, Sept. 18, 1915.  
The day begins fine & clear, light NE breeze. Bar 30.00.  
6.00 P. M. Night watchman came on duty. The day ends cloudy, light Easterly breeze.

Sunday, Sept. 19, 1915.  
The day begins overcast & raining, light SE breeze. Bar 29.85.  
The day ends fine, partly cloudy, light Westerly breeze.  
6.00 P. M. Night watchman came on duty.

Monday, Sept. 20, 1915.  
The day begins hazy with light W SW breeze. Bar 29.78.  
6.00 P. M. Night watchman came on duty. The day ends partly cloudy with moderate Westerly breeze.

## Exhibit L. 3.

Tuesday, Sept. 21, 1915.

The day begins overcast with heavy rain, fresh W SW breeze. Bar 29.70.  
6.00 P. M. Night watchman came on duty. The day ends partly cloudy, strong NW breeze.

Wednesday, Sept. 22, 1915.

The day begins fine & clear, strong NW breeze. Bar 30.05.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh Northerly breeze.

Thursday, Sept. 23, 1915.

The day begins clear & calm. Bar 30.23.  
6.00 Night watchman came on duty. The day ends fine & clear, light SW breeze.

Friday, Sept. 24, 1915.

The day begins misty, light Westerly air. Bar 30.20.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, light Wly breeze.

Saturday, Sept. 25, 1915.

The day begins fine & clear, light NE breeze. Bar ———  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, light Westerly breeze.

Sunday, Sept. 26, 1915.

The day begins overcast, moderate SW breeze. Bar 29.70.  
6.00 P. M. Night watchman came on duty. The day ends partly cloudy, strong Westerly breeze.

Monday, Sept. 27, 1915.

The day begins fine & clear, strong NW breeze. Bar 29.85.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh Northerly breeze.

Tuesday, Sept. 28, 1915.

The day begins fine & clear, fresh NW breeze. Bar 29.90.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh NW breeze.

Wednesday, Sept. 29, 1915.

The day begins fine & clear, moderate NW breeze. Bar 30.00.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear with light SW breeze.

## Exhibit L. 3.

Thursday, Sept. 30, 1915.  
 The day begins fine & clear, light Westerly breeze. Bar 30.13. Fine weather all day.  
 6.00 P. M. Night watchman came on duty.  
 6.30 P. M. Started to pump water into tank #4 to test bulkheads.

Friday, Oct. 1st, 1915.  
 The day begins overcast & cloudy, light SE breeze. Bar 30.03. Commenced to rain in the forenoon and continued all day.  
 5.00 P. M. #4 tank full, started to fill tanks #2 & #6.  
 6.00 P. M. Night watchman came on duty.

Saturday, Oct. 2nd, 1915.  
 The day begins overcast & raining, light Easterly breeze. Bar 30.03.  
 7.30 A. M. Tank #6 full.  
 1.00 P. M. Tank #2 full.  
 The day ends overcast & raining, light Easterly breeze.  
 6.00 P. M. Night watchman came on duty.

Sunday, Oct. 3rd, 1915.  
 The day begins overcast, light Easterly breeze. Bar 29.95.

Monday, Oct. 4th, 1915.  
 6.00 P. M. Tank #1 filled to test bulkhd.  
 6.00 Night watchman came on duty.  
 8.20 Started pump water into apt. cofferdam.  
 12.30 Cofferdam full.

Tuesday, Oct. 5th, 1915.  
 3.30 A. M. Commenced filling tank #6, testing pipe line & bulkhd.  
 6.00 P. M. Night watchman came on duty.  
 6.15 P. M. Started pump water into tank #7 & cofferdam.

Wednesday, Oct. 6th, 1915.  
 1.45 A. M. Finished filling tank #7 & cofferdam.  
 " " Started to pump water into tank #3.  
 6.00 P. M. Night watchman came on duty.

## Exhibit L. 3.

**Thursday, Oct. 7th, 1915.**  
The day begins overcast, light SE breeze. Bar 29.98. Pumping various tanks all day.  
6.00 P. M. Night watchman came on duty. The day ends overcast & raining, moderate easterly breeze.

**Friday, Oct. 8th, 1915.**  
The day begins overcast, fresh SW breeze. Bar 30.03. Pumping out tanks all day.  
6.00 P. M. Night watchman came on duty. The day ends clear, light Westerly breeze.  
7.20 Started pump water out of #1 tank.  
12.25 Stopped pump. No steam. #1 tank about half full.

**Saturday, Oct. 9th, 1915.**  
The day begins fine & clear, fresh NW breeze. Bar 30.00.  
5.30. Started pump No. 1 & drain various tanks.  
4.00 P. M. All tanks drained and cleaned except #4.  
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh NW breeze.

**Sunday, Oct. 10th, 1915.**  
The day begins partly cloudy, fresh NW breeze. Bar 30.03.  
11. A. M. Towboats Dalzelline, W. F. Dalzell & Fred B. Dalzell, Jr., alongside. Left Van Brunt St., Brooklyn.  
12.30 Arrived Pier 6, Constable Hook 12.40 Tugs left. 2.00 P. M. Started to pump out No. 4 tank.  
6 P. M. Night watchman came on duty. 7.15 Tank #4 empty & drained

**Monday, Oct. 11th, 1915.**  
The day begins fine & clear, light Westerly breeze. Bar 30.25.  
9.30 Started to take in oil. 9.30 A. M. Started to coal.  
6.30 P. M. Night watchman came on duty. The day ends fine & clear, light Westerly breeze.

**Tuesday, Oct. 12, 1915**  
The day began fine & clear, light W breeze. Bar 30.30.  
5.00 A. M. Finished loading. 10.00 A. M. Towboats S. T. Co. #15 & #17 alongside, left Oil Dock. 10.55  
A. M. Anchored off Thompsonville. 6.15 P. M. Finished coaling.  
Draft forward 25 ft. 6 in., aft 26 ft. 11 in.  
Anchor lights attended to at sunset.

**Wednesday, Oct. 13, 1915.**  
The day begins calm & foggy. Crew employed getting ship ready for sea.  
The day ends partly cloudy, light SW breeze. Anchor lights attended to.  
P. M., 11.45. Stand by. 11.50. Started to heave up anchor Bar 30.10.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

Exhibit L. 3.

H	K	Tenths	Courses Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	14th day of October, 1915	Remarks
A. M. 1					12.05 Anchor aweigh.	Full speed ahead.	12.25 Narrows.	1.55 Stand by engines.	2.12 Stopped to drop pilot.	2.15 Ambrose Channel L. V. abeam.
2				SExExE						
3				SExExE						
4				SExExE	SW	3 63				
5										
6										
7										
8	46			SExExE	South	3 63	30.30			5.30 Fire Island L. Ship abeam. Overcast & cloudy, gentle Southerly breeze. Moderate Southerly swell.
9										
10										
11										11 A. M. Clock advanced 24'.
12	76	30	ExS½	SExExE	South	3 66	30.30			Gentle southerly breeze & moderate south swell, partly cloudy.
					Running time 9h. 11m.	A. S. 8.5.				
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
Noon S 82° E 76 78 miles E of Ambrose Channel 40° 28' N										
1			E ¾ S	ESE						
2										
3										
4	108	32	E ¾ S	ESE	South	2 64	30.26			Light breeze, mod. Southerly swell, partly cloudy.
5										
6										
7										
8	110	32	E ¾ S	ESE	South	2 62	30.25			Weather remain the same as in the preceding watch.
9										
10										
11										
P. M. 12	172	32	E ¾ S	ESE	SSW	2 63	30.25			Light breeze, light southerly swell, light haze & occasionally vapor.
Officer on Watch										
J. W. Fleming		12		4	Limberg		12	4	5	
A. Ricca		4		8	Harold		4	8	5	
C. Jensen		8		12	C. M. Nellesen		8	12	0	Coal on Hand
J. W. Fleming		12		4	J. Fernandez		12	4	0	
A. Ricca		4		8	J. Christofersen		4	8	5	
C. Jensen		8		12	J. Aarre		8	12	5	

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Course Tenths Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 15th day of October, 1915
A. M. 1									
2									
3									
4	204	32 E ¼ S	ESE	SSW	2	63	30.23		Light breeze, slight Southerly swell, partly cloudy & misty.
5									
6									
7									
8	236	31 E ¼ S	ESE	SW		63	30.24		Light S SW to SW breeze, heavy Southerly swell. Cloudy & thick fog all through the watch.
9									
10									
11	267	31 E ¼ S	ESE		0	68	30.22		9 A. M. Advanced clock 14'. Cloudy & thick fog at intervals.
12				Running time 23h 46m.	A. S. 8.7 knots.				Calm. Southerly swell.
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.									
Noon S 89° E 191 207									
1									
2									
3									
4	302	35 N 80° E	E ¼ S	North	2	65	30.18		Light breeze, smooth sea, overcast, foggy at times.
5									
6									
7									
8	337	35 N 80° E	E ¼ N	Var.	1	59	30.18		Thick fog to overcast & cloudy. Light var. Northerly airs & smooth sea.
9									
10									
11									
12	368	31 N 80° E	E ¼ S	ENE	5	65	30.17		Fresh increasing E NE breeze. Moderate sea, overcast, foggy & rain at times.
P. M. 12									
Officer on Watch									
		From	To	Men on Look Out		From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming		12	4	M. Limberg		12	4	5	
A. Ricca		4	8	Harold		4	8	5	
C. Jensen		8	12	C. M. Neilson		8	12	0	
J. W. Fleming		12	4	J. Fernandez		12	4	0	
A. Ricca		4	8	J. Christoffersen		4	8	5	
C. Jensen		8	12	J. Aarre		8	12	5	
									Coal on Hand

12.20 c/c S. C. N 80° E.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

[illegible]

Var.	Course	Dist.by	Log	Dist.by	Obs.	Diff.	of Lat.	Departure	Lat.by D.R.	Lat.by Obs.	Diff.	of Long.	Long.by D. R.	Long.by Obs.
Noon	N 65° E	142	174						41° 41' N				64 17' W	

[illegible]

**Exhibit L. 3.**

**Voyage #6. Journal from New York towards Copenhagen Via Kirkwall**

H	K	Tenths	Course Standard	Steering	Winds	Force	Air	Thermometer	Barometer	Deviation Compass	17th day of October, 1915	Remarks
A. M.	1											
2												
3												
4	506	25	N 87° E	Ex S	NW	4	53		30.09			
5												
6												
7												
8	533	27	N 87° E	Ex S	NW		55		30.05			
9												
10												
11												
12	553	19	N 87° E	Ex S	WNW	4	61		30.00			
								Running time 23h. 46m.	A. S. 8.4.			
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.												
Noon	N 70° E	143	195						42.46			60.05

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	A. Limberg	12	4	5	
A. Rice	4	8	Harold	4	8	5	
C. Jensen	8	12	C. M. Nielsen	8	12	0	
J. W. Fleming	12	4	J. Fernandez	12	4	0	Coal on Hand
A. Rice	4	8	J. Christofersen	4	8	5	
C. Jensen	8	12	J. Aarre	8	12	8	





## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

M	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks
A. M.	1		N 66° E							19th day of October, 1919
2										
3										
4	876	33	N 65° E	Ex N $\frac{1}{2}$ N	NW	4	50	30.30		2.00 a/c Steering Comp. Ex N $\frac{1}{2}$ N. Moderate breeze & swell, partly cloudy.
5										
6										
7										
8	910	34	N 65° E	Ex N $\frac{1}{2}$ N	NW	3	48	30.30		Clear with passing clouds, mod. NW breeze & mod. sea.
9										
10										
11										
12	940	30	N 65° E	Ex N $\frac{1}{2}$ N	NW	3	54	30.30		9 A. M. Clock advanced 14'.
13										No change in weather.
										Running time 23h. 48m. A. S. 7.5.

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Let. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.  
 Noon N 63° E 194 135  
 65° 53' N 65° 16' W

1										
2										
3										
4	974	34	N 65° E	Ex N $\frac{1}{2}$ N	NW	5	54	30.36		Fresh breeze, rough sea, overcast.
5										7.00 c/c S. C. N 75° E. Steer. Comp.
6										E $\frac{1}{2}$ N. Overcast & cloudy, fresh
7										NW breeze, rough running sea. Vee-
8	1004	32	N 75° E	E $\frac{1}{2}$ N	NW	5	53	30.30		sel shipping heavy sea.
9										
10										
11										
12	1039	33	N 75° E	E $\frac{1}{2}$ N	WNW	5	54	30.24		Overcast & cloudy, fresh W NW breeze, moderate sea & Northerly swell.
P. M.										

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	J. Christofersen	12	4	5	
A. Riica	4	8	J. Fernandes	4	8	5	
C. Jensen	8	12	A. Limberg	8	12	0	
J. W. Fleming	12	4	J. Aarre	12	4	0	
A. Riica	4	8	C. M. Nielsen	4	8	5	
C. Jensen	8	12	Harald	8	12	5	

Coal on Hand

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H		Course Standard		Steering	Winds Force	Thermometer		Barometer	Deviation Compass	Remarks 20th day of October, 1915
M	K	Tenite	Standard			Air	Water			
A. M. 1										
2										
3										
4	1071	32	N 75° E	SE 1/4 N	W NW 4	53		30.22		Mod. breeze, & NW'ly swell, over- cast.
5										
6										
7										
8	1104	23	N 75° E	SE 1/4 N	W NW 3	51		30.18		Weather remains the same as in the preceding watch.
9										
10										
11										
12	1136	32	N 75° E	SE 1/4 N	W-Var 2	44		30.12		9 A. M. Clock adv. 14'. Light Var. W'ly breeze, rain & hazy, mod. W'ly swell.
					Running time 23h. 46m.		A. B. 8.5.			
Var. Course Dist. by Log Dist. by O.R. Dist. of Lat. Departure Lat. by D.R. Lat. by Obs. Dist. by Obs.										
None N 44° E 136 265 43 16 43 16										

Var. Course Dist. by Log Dist. by O.R. Dist. of Lat. Departure Lat. by D.R. Lat. by Obs. Dist. of Long. Long. by O.R. Long. by Obs.

Nose N 40° E 136 205									
1									
2									
3									
4	1172	36	N 75° E	SE ¼ N	W SW 3	53		30.03	Light breeze, overcast & foggy, mod- erate swell.
5									
6									
7									
8	1205	33	N 80° E	SE ¼ S	Var.	2	47	29.94	6.30 c/v Stand Comp. N 80° E. Steer. Comp. E ¼ S. Overcast, thick fog to heavy rain. Mod. Var. SW'ly breeze & long Westerly swell.
9									
10									
11									
P.M. 12	1237	32	N 80° E	SE ¼ S	East	5	48	29.81	Overcast & heavy rain at times. Fresh E'ly breeze, heavy NE'ly swell.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	J. Aarre	12	4	5	
A. Ricca	4	8	J. Christofersen	4	8	5	
C. Jensen	8	12	Harold	8	12	0	
J. W. Fleming	12	4	A. Limberg	12	4	0	
A. Ricca	4	8	J. Fernandez	4	8	5	
C. Jensen	8	12	C. M. Nielsen	8	12	5	

Coal on Hand

Coal on Hand

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Courses Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 21st day of October, 1915
A. M.	1	1357						
2								
3								
4	1268	31 N 80° E	E ¼ S	NE	3 50	29.89		Gentle breeze, overcast & cloudy, heavy Northerly swell.
5								
6								
7								
8	1298	30 N 50° E	E ¼ S	NNE	4 50	29.92		Gentle to mod. NNE breeze, heavy NE swell, clear with passing clouds.
9								
10								
11								
12	1324	26 N 80° E	E ¼ S	NNE	3 52	29.95		9.30 Eng. stopped. 9.35 Eng full ahead. No change in weather.
13				Running time 23h. 46m. A. S. 8.9.				
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.								
Noon	N 50° E	188	207		50° 07' N		44° 43' W	
1								
2								
3								
4	1353	29 N 80° E	E ¼ S	NNW	4 50	29.93		12.53 Put ship Sx E to calk Bunker hatch #5 port. 1.15 Slow. Swing ship to N NW. 1.33 full speed ahead. a/c N 80° E. Mod. breeze, rough sea, heavy Norly swell, cloudy. Clear with passing clouds. Gentle N NW breeze & heavy North- erly swell.
5								
6								
7								
8	1383	30 N 80° E	E ¼ S	NNW	3 48	29.94		
9								
10								
11								
P. M.	12	1411	28 N 80° E	E ¼ S	North 3 46	29.94		Weather same as watch preceding.
Lights Exhibited								
Officer on Watch	From	To	Men on Look Out	From	To	Running	Exhibited Anchor	Coal Consumed
J. W. Fleming	12	4	A. Limberg	12	4	5		
A. Ricca	4	8	Harold	4	8	5		
C. Jensen	8	12	A. Limberg	8	12	0		
J. W. Fleming	12	4	J. Fernandez	12	4	0		
A. Ricca	4	8	J. Aarre	4	8	5		Coal on Hand
C. Jensen	8	12	J. Christofersen	8	12	5		

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Course Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 22nd day of October, 1915
A. M. 1								
1								
2								
3								
4	1443	31	N 90° E	E ¼ S	NNW 3 48	29.92		Gentle breeze, heavy Northerly swell, cloudy.
5								
6								
7								
8	1473	31	N 90° E	E ¼ E	NNW 3 48	29.91		Clear with passing clouds, gentle N NW breeze & heavy NW'ly swell. 9 A. M. Clock advanced 14'.
9								11.45 c/c Std. Comp. N 83° E.
10								Light NNE breeze, partly cloudy, mod. no'y swell.
11								
12	1507	31	N 82° E N 83° E	E ¼ S E ¼ S	NNE 3 48 Running time 23h. 46m. A. S. 7.5.	29.87		
Var. Course Dist by Log Dist by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.								
Noon 180 179 52 01 41 06								
1								
2								
3								
4	1537	33	N 82° E	E ¼ S	NNW 2 49	29.83		Light breeze, mod. Northerly swell, cloudy.
5								
6								
7								
8	1568	31	N 82° E	E ½ S	Var 3 46	29.80		Overcast & cloudy, variable Westerly breeze & long mod. NW'ly swell.
9								
10								
11								
12	1600	33	N 82° E	E ½ S	SSE 3 47	29.74		Gentle SSE breeze, overcast & cloudy, mod. Nor'y swell.
P.M. 12								
Officer on Watch								
		From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	13		4	C. M. Nielsen	12	4	5	
A. Ricca	4		3	J. Limberg	4	8	5	
C. Jensen	8		13		8	12	0	
J. W. Fleming	13		4		12	4	0	Coal on Hand
A. Ricca	4		8	Harold	4	8	5	
C. Jensen	8		12	J. Fernandez	8	12	5	



**Voyage #6. Journal from New York towards Copenhagen Via Kirkwall**

[illegible]

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited	Coal Consumed
J. W. Fleming	12	4	J. Fernandez	12	4	5	
A. Ricca	4	8	Harold	4	8	5	
C. Jensen	8	12		8	12	0	
J. W. Fleming	12	4		12	4	0	
A. Ricca	4	8	J. Christofersen	4	8	5	Coal on Hand
C. Jensen	8	12	J. Aarre	8	12	5	

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

M	K	Courses Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 25th day of October, 1915
A. M. 1								
2								
3								
4	2026	34 E ¼ S	ExS¾S	SSW 4	54	29.78		Mod. breeze & sea, overcast, rain at times.
5								
6								
7								
8	2057	31 E ¼ S	ExS¾S	SSW	54	29.84		Overcast & local rain & fog through the watch. Fresh SSW wind & rough beam sea. C. Ex S. Steer. C. 8.10 c/c Std. 9.00 A. M. Clock Adv. 20'.
9								
10								
11								
12	2084	27 Ex S	SEEx¾E	SSW 5	55	29.90		Weather remains the same as watch preceding.
Running Time 23h. 40m. A. S. 8.								
Var. Course Dist. by Log Dist. by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.								
Noon N 62° E 191 190 57° 21' N 28° 08' W								
1								
2								
3								
4	2115	31 Ex S	SEEx¾E	South 5	55	29.92		Fresh breeze, rough sea, overcast & raining.
5								
6								
7								
8	2146	31 ExS¾S	SE¾E	South 4	54	29.95		Fresh to mod. Southerly breeze, overcast & heavy rain through the watch. Rough broken seas.
9								
10								
11								
12	2170	24 ExS¾S	SE¾E	Var.	5 54	30.05		Overcast & misty to clear, fresh var. SW to NW breeze, rough cross sea & So'y swell.
P. M. 12								
Officer on Watch								
		From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12		4	A. Limberg	12	4	5	
A. Ricca	4		8	C. M. Nelissen	4	8	5	
C. Jensen	8		12		8	12	0	
J. W. Fleming	12		4		12	4	0	Coal on Hand
A. Ricca	4		8	J. Fernandez	4	8	5	
C. Jensen	8		12	Harold	8	12	5	





## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Courses Tenths Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 27th day of October, 1915
A. M. 1									
2									
3			SE ½ E	SE	6	54	29.60		Strong breeze, mod. sea, overcast & hazy.
4	2395	34	Ex S ½ S						
5									
6									
7	2428	33	Ex S ½ S	SE ½ E	SE	6	53	29.42	Overcast, heavy rain. Strong SE wind & rough sea.
8									9.00 A. M. Clock advanced 24'.
9									Moderate gales, squally high sea.
10									Vessel laboring & taking water fore & aft.
11	2461	33	Ex S ½ S	SE ½ E	SE	7	53	29.25	
12									Running time 23h. 37m. Ave. Speed 8.
Var. Course Dist. by Log Dist. by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.									
Noon N 80° E 189 189 58° 50' N 15° 49' W									
1							29.20	12.30	Steering Comp. ENE.
2							29.12	2.30	Half speed. Put ship head to wind. 3.35 Slow. Strong gale, high sea, overcast, heavy rain.
3							29.08	29.02	
4	2469	8	S ½ E	S x E	9	54	29.02	7.00	Course S x E. Weather remain the same as in the preceding watch.
5							28.96		
6							28.91		
7							28.84		
8	2469	0	S x E	SSE	9		28.80		Weather moderating. Strong So'y breeze, heavy swell, clear.
9							28.75		
10							28.66		
11							28.58		
12	2477	8	S 68 E	SE ½ E	South	6	53	10.30	Full speed ahd.
							28.66	10.30	c/c Std. S 68° E. Steer. SE ¼ E.
P. M. 12									
Officer on Watch									
		From	To	Men on	Look Out	From	To	Lights Exhibited	Coal Consumed
J. W. Fleming	12	4	Christofersen	12	4	5			
A. Rice	4	8	J. Aarre	4	8	5			
C. Jensen	8	12		8	12	0			
J. W. Fleming	12	4	J. Fernandez	12	4	0			Coal on Hand
C. Jensen	4	8	Harold	4	8	0			
	8	12		8	12	5			

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	28th day of October, 1915	Remarks
A. M. 1								23.65			
2								28.65			
3								28.64			
4	2498	21	S 68° E	SE 1/4 E	SSE	8	53	28.63			Fresh gale, high sea, clear to cloudy, rain at times.
5								28.62			
6								28.62			
7								28.60			Fresh to strong SSE gale, high seas. 6.30 Eng. slow. Ship hove to shipping heavy seas at midship.
8	2506	6	Various	Various	SSE	9	53	28.60			9.00 A. M. Clock advanced 6".
9								28.58			
10								28.58			
11	Lost							28.60			9.15 Eng. half speed. Fresh to moderate gale, partly cloudy, high sea.
12	Rotator		Various	Various	SSE	8	53	28.60			
							Running time 23h. 47m. A. S. 43.				
Var. Courses Dict. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.											
Noon N 19° E			101					53° 08			12. 36
1											
2											
3											
4	--	--	Various	Various	SSE	8	53	28.78			Fresh gale, high sea, cloudy, rain squalls at times. Still going half speed.
5											
6											
7											
8	--	--	Various	Various	SSE	7	53	29.06			Fresh to mod. SSE gale. Clear with passing clouds & local rain squalls. Ship shipping heavy seas.
9								29.15			
10											
11											
P. M. 12			Various	Various	SSE	7	52	29.24			No change in weather.
Officer on Watch											
J. W. Fleming		12		4	Nielsen		12	4	5		
A. Ricca		4	8	12	Limborg		4	8	5		
C. Jensen		8	12	4			8	12	0		
J. W. Fleming		12	4	8	Harold		12	4	0		Coal on Hand
A. Ricca		4	8	12	Aarre		4	8	5		
C. Jensen		8	12	4			8	12	5		



## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air	Water	Barometer	Deviation Compass	Remarks 30th day of October, 1915
A. M. 1											
2											
3											
4	2625	29	S 33° E	SEx $\frac{1}{2}$ E	SSE	6	50		29.63		Strong breeze, rough sea, clear with passing clouds.
5											
6											
7											
8	2655	30	S 33° E	SEx $\frac{1}{2}$ E	SSE	5	50		29.66		Weather remain the same as in the preceding watch.
9			S 33° E	SEx $\frac{1}{2}$ E							9 A. M. Clock adv. 22'. 9.00 c/c Std. S 75° E. Steer. SEx $\frac{1}{2}$ E.
10											10.35 North Rona abm. 9' off.
11											No change in weather.
12	2682	27	S 75° E	SEx $\frac{1}{2}$ E	South	4	52		29.70		
					Running time 23h. 38m.						Speed 8 Knots.

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.  
 Noon N 84° E 164 189 59° 17' 5° 29 W

1											
2											
3											
4	2717	35	S 75° E	SEx $\frac{1}{2}$ E	South	5	52		29.70		Fresh breeze, moderate sea, clear.
5											
6											
7											
8	2751	34	N 39° W	NW $\frac{1}{4}$ N	South	4	52		29.72		Fred to mod. Southerly breeze & mod. sea. 8 Eng. slow ahead. C/A S. C. N 39° W. Steering Comp. NW $\frac{1}{4}$ N.
9											
10											
11											
P. M. 12			N 39° W	NW $\frac{1}{4}$ N	South	4	52		29.71		Clear with passing clouds. Moderate Southerly breeze. Moderate sea.

Officer on Watch	From	To	Men on	Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Aarre	am	12	4	5	
A. Rica	4	8	Harold	am	4	8	5	
C. Jensen	8	12			8	12	0	
J. W. Fleming	12	4			12	4	0	Coal on Hand
A. Rica	4	8	Christofersen		4	8	5	
C. Jensen	8	12	Fernandez		8	12	5	

## Exhibit L. 3.

## Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks
A. M.	1		S 56° E	SE ½ S					1.00 A. M. a/c Stand Comp. S 56° E.	31st day of October, 1915
	2								Steering SE ½ S.	
	3								Fresh breeze, moderate sea, clear,	
	4	No	S 56° E	SE ½ S	South	5	52	29.72	passing clouds.	
	5		S 44° E	SE x S ½ S					6.00 Eng. half speed ahead.	
	6	log							6.30 Stopped engine.	
	7								6.40 c/e S. C. S 44° E full speed.	
	8	out	Various	Various	South	5	50	29.73	6.50 Noup Head L. H. S. W.	
	9		S 56° E	S x E ½ E					Similar weather preceding.	
	10								9.07 Struck a reef in Westray Firth. Engines full speed astern. Ordered	
	11								all hands to clear away the boats. Sounded amidships and got 5 fathoms.	
	12								Forward 2 ½ fathoms. Aft 5 ½ fathoms. 10.05 Started to pump out #1 tank.	
									10.10 British torpedo boat "B" came out. 10.55 Torpedo boat took a hawser.	

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.

1	11.00 A. M. Full speed astern, and Torpedo boat pulling. 11.10 Hawser
2	parted. 11.15 British Torpedo boat "C" came out and put wire hawser
3	aboard. 11.24 Engines full astern. 11.26 Wire parted and fouled pro-
4	peller, stopped engines. 12.28 Tug Plover came alongside. 12.45 Tug
5	took line and attempted to pull ship off. Parted the three (3) lines.
6	1.30 Lowered boats ready to abandon ship. 3.30 Ship not moving. 4.00
7	P. M. Crew left for Kirkwall on tug Plover. 5.00 P. M. Captain, second
8	mate, Chief Eng., First Second Asst. Eng., Wireless operator and seaman
9	J. Christoffersen left ship and went aboard British Patrol boat Evening
10	Star and stood by all night.
11	
12	

P. M. 12

Officer on Watch	From	To	Men on Leek Out	From	To	Lights Exhibited Running Ancher	Coal Consumed
J. W. Fleming	12	4	Limberg	12	4	5	
	4	8		4	8	5	
	8	12		8	12	0	
	12	4		12	4	0	
	4	8		4	8	5	
	8	12		8	12	5	Coal on Hand

## Exhibit L. 3.

Remarks—1st day of November, 1915.

Stranded in Westray Firth.

2.00 A. M. Men standing by returned to ship. 9.30 A. M. British trawlers Britannia and Daisy alongside and Gloria astern trying to haul ship off. 10.00 A. M. Opened valves to let oil run down to sea level. 2.30 P. M. Crew returned from Kirkwall on tug Plover. 3.00 P. M. Plover took a line. 3.05. Line parted. 3.40 P. M. Plover put her own line aboard ship. 3.50 Line parted. 4.30 Oil leaking into fire room. 5.00 P. M. All hands left ship. The chief officer standing by on Evening Star.

Nov. 2nd, 1915.

Ship still in same place. Water inside rising and falling with the tide. Crew of Evening Star transferring provisions to their own ship. Chief officer in charge.





[fol. 209]

IN UNITED STATES DISTRICT COURT

[Title omitted]

LIBELANT'S EXHIBIT 3—Filed July 30, 1921

Steamship Log Book, in Civil Time, of the Steamship Llama, on  
Voy. #6, New York to Copenhagen via Kirkwall

The force of the wind should be entered in its column according to  
the following table:

0 Calm.....	6 Strong Breeze.....
1 Light Air.....	7 Moderate Gale.....
2 Light Breeze.....	8 Fresh Gale.....
3 Gentle Breeze.....	9 Strong Gale.....
4 Moderate Breeze.....	10 Whole Gale.....
5 Fresh Breeze.....	11 Storm.....
	12 Hurricane.....

[File endorsement omitted.]

(Here follows reproduction of log book, marked side folio pages 210-  
255, inc.)

[fol. 256]

IN UNITED STATES DISTRICT COURT

EXHIBIT L. 6

No. 2.	Original	No. 1263.
	Voyage	

The United States of America,

(Cut)

Treasury Department,  
Bureau of War Risk Insurance,  
Washington, D. C.,

(Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in  
funds current in the United States, to them or order), does make in-

surance and cause them to be insured at and from New York to Copenhagen and return to the United States with privilege of coaling in Scandinavia and with privilege of a port or ports of call for Admiralty instructions—

Sum Insured, \$115,000

One hundred fifteen thousand dollars upon the hull, machinery, boilers, equipment, stores and everything connected therewith of and in good Vessel called the "Llampa" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure on the said vessel, etc., as above, and shall so continue and endure until the said vessel, etc., shall be arrived at as above and until she has moored and anchored twenty-four hours in good safety. The said vessel, etc., for so much as concerns the insured, by agreement between the insured and insurers in this policy, are and shall be valued at \$115,000.

[fol. 257] Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are the men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war.

Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

In the case of an iron or steel vessel, average payable without deduction of new for old.

And in case of loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard, and recovery of the said vessel, etc., or any part thereof without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and [fol. 258] agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this insurance, by the insured, or their assigns at and after the rate of 3 per cent.

Premium, \$3,450

It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

It is understood and agreed that the vessel insured hereunder shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted by the insured not to sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this policy may, by endorsement made hereupon, cover to such special Port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to [fol. 259] a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent.

Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until countersigned by William C. De Lanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of belligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of belligerents, or one or more persons who, in the course of the voyage, directly assist the operations of belligerents; or if she carries supplies to war vessels of belligerent nations. J. B. B. P.

[fol. 260] Countersigned at Washington, D. C., this 8th day of October, 1915.

J. Brooks B. Parker, Assistant Director.

Warranted free from claim consequent upon or arising from the ultimate destination of the cargo being the country of a belligerent.  
J. B. B. P.

## Copy

## Application for Vessel Insurance

## Voyage or Time Policy

The United States of America,  
Treasury Department,  
Bureau of War Risk Insurance,  
Washington, D. C.

Insurance is limited to American vessels against the risks of war only. Rates on Vessels will be quoted for ninety-day periods or for voyage.

Owner: Standard Oil Company (New Jersey), to whom loss payable, them or order.

Vessel, Str. "Llama" (ex "Brilliant"); Valuation, \$115,000; sum insured, \$115,000; rate, 3%; premium, \$3,450.

Voyage, at and from New York to Copenhagen and return to the United State with privilege of coaling in Scandinavia and with privilege of port or ports of call for Admiralty instructions.

Application is made for insurance against war risk on the form of policy issued by the Bureau of War Risk Insurance, the following conditions being imposed, which may not be changed except under [fol. 261] signature of the Director of the Bureau of War Risk Insurance:

A. The valuation of the vessel shall be either the valuation of the marine insurance policy or as agreed with the Director.

B. If any marine insurance is in force, particulars of one policy shall be filed in on the back of this application.

C. Warranted that the vessel will sail within fifteen days from the date on which this insurance was effected.

Johnson & Higgins, (Signed) C. M. Parker, for Applicant.

No. 1263. The United States of America, Treasury Department, Bureau of War Risk Insurance. Voyage. Standard Oil Company (New Jersey). "Llama." Sum insured, \$115,000; rate, 3%; premium, \$3,450. Johnson & Higgins, New York City. (Rubber stamped:) Effected by Johnson & Higgins, 49 & 51 Wall St., N. Y. Entered 57202. Examined. O.

[fol. 262]

IN UNITED STATES DISTRICT COURT

EXHIBIT L. 7.

Original

No. 4.  
Freight.

No. 1269.

The United States of America

(Cut)

Treasury Department,  
Bureau of War Risk Insurance,  
Washington, D. C.

Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in funds current in the United States, to them or order), does make insurance and cause them to be insured at and from New York to Copenhagen with privilege of coaling in Scandinavia and with privilege of port or ports of call for Admiralty instructions—

Sum Insured, \$45,000

forty-five thousand dollars upon the freight and advances, if any, of the vessel called the "Llama" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure upon the said freight, etc., as above and shall so continue and endure until the said vessel shall be arrived at as above, and until she has anchored twenty-four hours in good safety.

Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are of men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of [fol. 263] hostilities or warlike operations, whether before or after declaration of war.

Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but, in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

And in case of any loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said

freight and advances, or any part thereof, without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment; having been

Premium, \$787.50. the insured or their assigns, at and after the rate of  $1\frac{3}{4}$  per cent.

Warranted by the insured free from claim consequent upon loss of time whether arising from a peril insured against or not.

[fol. 264] It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

It is understood and agreed that the vessel, the freight and advances of which are insured hereunder, shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted that the vessel, the freight and advances of which are insured hereunder, shall not sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this policy may, by endorsement made hereupon, cover to such special port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are [fol. 265] consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent.

Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proof of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until countersigned by William C. De Lanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of bel-

ligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of belligerents, or one or more persons who, in the course of the voyage, directly assist the operations of belligerents; or if she carries supplies to war vessels of belligerent nations. W. C. De L.

Countersigned at Washington, D. C., this 16th day of October, 1915.

William C. De Lanoy, Director.

Warranted that the goods are destined for the country of the port to which they are insured, and free of claim consequent upon or arising from their ultimate destination being a country of a belligerent. W. C. De L.

[fol. 266]

Copy

#### Application for Freight and Advances

The United States of America,

Treasury Department,

Bureau of War Risk Insurance,

Washington, D. C.

Insurance is limited to freight and advances, if any, of American vessels against the risk of war only.

Rates will be quoted for a voyage only.

Owner: Standard Oil Company (New Jersey), to whom loss payable, them or order.

Vessel, Str. "Llama" (ex "Brilliant"); sum insured, \$45,000; rate, 1¾%; premium, \$787.50.

Voyage, at and from New York to Copenhagen with privilege of coaling in Scandinavia and with privilege of port or ports of call for Admiralty instructions.

Application is made for insurance against war risks on the form of policy issued by the Bureau of War Risk Insurance, the following condition being imposed, which may not be changed except under signature of the Director of the Bureau of War Risk Insurance:

The insurance shall not exceed the amount of the steamer's freight collectible at destination, plus advances by the insured which are collectible at destination from consignee or owners of the goods.

Warranted that the vessel will sail within fifteen days from the date on which this insurance was effected.

Johnson & Higgins. (Signed) C. M. Parker, for Applicant.

[fol. 267] No. 1269. The United States of America, Treasury Department, Bureau of War Risk Insurance. Freight. Standard Oil Company (New Jersey). "Llama." Sum insured, \$45,000; rate,



1¾%; premium, \$787.50. Johnson & Higgins, New York City. (Rubber stamped:) Effected by Johnson & Higgins, 49 & 51 Wall St., N. Y. Entered 57202. Examined. —.

[fol. 268] IN UNITED STATES DISTRICT COURT

EXHIBIT L 8

Jan. 11th, 1917.

The Bureau of War Risk Insurance, Treasury Department, Washington, D. C.

DEAR SIR: "Llama"—Total Loss Oct. 1915.

We enclose herewith proofs of loss in support of claim for total loss in respect to the hull and freight of the above vessel. You insured the hull under your policy No. 1263 for \$115,000.00 and the freight under your policy No. 1269 for \$45,000.00.

We enclose copy of letter of Messrs. Kirlin, Woolsey & Hickox, also copies of the pleadings and decision in the case of Muller v. Globe & Rutgers Fire Insurance Company. Will you kindly give the settlement of this claim your proper attention.

Yours truly, Johnson & Higgins. — —, Manager Adjusting Department. JC.

Encl.

[fol. 269]

(Cut)

Bureau of War Risk Insurance, Marine Section,  
Treasury Department,  
Washington

March 18, 1918.

Messrs. Johnson & Higgins, 49 & 51 Wall St., New York, N. Y.

GENTLEMEN:

"Llama." Policies Nos. 1263 & 1269. Standard Oil Company (N. J.)

Referring to claims for total loss of hull and freight under the above-numbered policies, you are advised that the Bureau has given careful consideration to the documents you submitted in connection with these claims, but in view of the information now before it the Bureau cannot see its way clear to considering the vessel's loss as a result of war risk. In these circumstances all the papers sent to the Bureau are returned herewith. The log books are also returned under separate cover.

Very truly, Gilbert J. Murray, Deputy Commissioner.



[fol. 270] In the Matter of the Claim of the STANDARD OIL COMPANY (NEW JERSEY) for the Total Loss of the Steamship Llama, Her Cargo and Freight, under Policy No. 1269

Affidavit of David T. Warden on Claim for Total Loss of Freight on  
S. S. Llama

STATE OF NEW YORK,  
County of New York, ss:

David T. Warden, being duly sworn, says:

First. I am the manager of the foreign shipping department of the Standard Oil Company, a corporation of the State of New Jersey, hereinafter called the Standard Oil Company, and as such I have under my control and management the steamships owned by that company.

Second. The steamship Llama at all times herein mentioned was an American steamship, entirely owned by the Standard Oil Company and registered from the port of New York.

Third. On or about the 14th day of October, 1915, the steamship Llama being then staunch, strong and in all respects seaworthy and properly and fully manned and equipped, sailed from New York for the Port of Copenhagen, Denmark, via Kirkwall.

Fourth. The cargo of the steamship Llama on the voyage in question was laden on board the steamship under the direct supervision of the United States Customs Officials and all hatches were sealed by them with the Official Seal of the United States before the vessel sailed. Her cargo consisted of the following merchandise:

Gas Oil in bulk.....	1,473,116 gallons.
300 barrels of Mineral Colza Oil.....	15,230 "
30 barrels of Dry Glue, weighing.....	10,842 lbs.

[fol. 271] A certified copy of the outward manifest of the steamship Llama giving the then market value of the commodities is hereto annexed marked Schedule "A" and is hereby made a part of this affidavit.

Fifth. The cargo in question was at the time of the shipment and at all the times mentioned, the sole property of the Standard Oil Company (New Jersey) which had contracted to sell this cargo f. o. b. Copenhagen to Det Danske Petroleums Aktieselskab, a Danish corporation with offices at Copenhagen, which will hereinafter be referred to as the Danske.

Sixth. The agreement to sell this cargo consisting of gas oil in bulk, dry glue, and colza mineral oil in barrels to the Danske was made by correspondence between the Danske and the Standard Oil Company. Foreign Shipping Department. A true copy of this

correspondence is hereto annexed and marked Schedules B, B 1, B 2, B 3, B 4, B 5, B 6, and B 7. The details of the contract are as follows:

a. The Gas Oil

During the month of August, 1915, the Foreign Shipping Department of the Standard Oil Company received a letter from the Danske, enclosing an order for a full cargo of gas oil on the Llama, Schedules B 2, B 3.

This order was transmitted to the Foreign Sales Department and accepted by it, and a contract entered into which was referred to as Contract or Order No. 230, by which the Standard Oil Company agreed to ship on the Llama about 29,000 bulk barrels of gas oil, which was approximately the capacity of the steamship Llama and which the Standard Oil Company agreed to sell to the Danske at 3¢ per gallon, plus a freight of 2.99¢ per gallon, a freight amounting to 42s 6d, per ton. True copies of this acceptance and the confirmation thereof sent to the Danske in the letter from the Standard Oil [fol. 272] Company, dated August 25, 1915, Schedule B 4, are hereto annexed marked Schedules C and D, and hereby made part of this affidavit.

Thereafter the cargo so ordered and agreed to be sold was loaded on the steamship Llama and the capacity of the Llama at this loading was 1,473,116 gallons, amounting to 29,463.32 bulk barrels. At the agreed price of 3¢ per gallon, plus 2.99¢ freight to Copenhagen, excluding any other expenses than freight, the amount payable f. o. b. Copenhagen by the Danske was \$88,239.65. A true copy of the shipment note or invoice is hereto annexed marked Schedule E and hereby made part hereof.

The contract value of the oil thus shipped on board the Llama at New York was \$44,193.48, and the freight payable on delivery at the agreed contract rate of 2.99¢ per gallon was \$44,046.17.

b. The Dry Glue

During September, 1915, the Foreign Shipping Department of the Standard Oil Company received an order dated September 10, 1915, from the Danske for 25 barrels of dry glue, Schedule B 5.

This order was duly transmitted by the Foreign Shipping Department of the Standard Oil Company to the Cooperage Department, in a letter, a true copy whereof is hereto annexed as Schedule F, and accepted under date of October 2, 1915, by the Cooperage Department, in a letter, a true copy whereof is hereto annexed as Schedule G, the agreed price being 10¢ per pound, barrels \$1.26½ extra, plus lighterage, freight and loading expenses.

c. The Mineral Colza Oil

Thereafter the Foreign Shipping Department of the Standard Oil Company received an order from the Danske, dated September 15, 1915, for 300 barrels of mineral colza oil, Schedule B 6. This order

was duly transmitted to the Lubricating Department and accepted [fol. 273] by it as an addition to the order No. 230 at a price of 10¢ per gallon f. t. v. plus freight and loading expenses. A true copy of the acceptance by the Lubricating Department of this order is hereto annexed marked Schedule H, and is hereby made a part of this affidavit.

Thereafter the Foreign Shipping Department of the Standard Oil Company drew up a formal acceptance of the offer of the Danske for the 300 barrels of mineral colza oil and 30 barrels of dry glue. A true copy of this acceptance is marked Schedule I, and hereby made a part hereof. This confirmation of the additional orders was enclosed to the Danske in the letter dated October 6, 1915, Schedule B 7, as an addition to Order No. 230 under which the gas oil had been contracted for.

Thereafter the said 300 barrels of mineral colza oil and the said 30 barrels of dry glue were duly shipped on board the steamship Llama on or about October 11, 1915, and shipment notes or invoices were duly issued. True copies of shipment notes are hereto annexed marked Schedules J and K and hereby made part of this affidavit.

Thereafter an invoice for the entire cargo including the gas oil, the mineral colza oil, and the glue, and showing the extra charges payable thereon, is hereto annexed marked Schedule L and is hereby made a part of this affidavit.

The weight of the 300 barrels of colza oil and the 30 barrels of dry glue was 61.95 tons, and the freight thereon at the agreed rate of 42s. 6d., Schedule B 4, payable on delivery amounted in money of the United States to \$640.65 as shown on Schedule L.

The total freight therefore, which the Standard Oil Company had at risk on the steamship Llama at the time of her loss under the circumstances hereinafter described was \$44,686.82. The said freight was totally lost to the Standard Oil Company by reason of the loss of the steamship Llama.

[fol. 274] Seventh. Separate bills of lading for the cargo thus shipped were issued and signed by the master of the steamship Llama. A bill of lading was issued for the gas oil and a bill of lading for the 300 barrels of mineral colza oil and the 30 barrels of dry glue, and were signed by the master of the steamship Llama. True copies of these bills of lading are hereto annexed, marked Schedules M and N respectively.

Eighth. The provision that the vessel should go to Copenhagen via Kirkwall was inserted in the manifest and the bill of lading solely because of the restraint exercised by the British Naval Authorities on all vessels proceeding to Scandinavian ports by the northward of Scotland. The provision for the steamship Llama to call at Kirkwall was not a provision for a voluntary call at that port, but was a compulsory call arranged for the purpose of minimizing the delays resulting from the interception of vessels at sea which oftentimes happened after they had gone a considerable distance past the Orkney Islands.

From the beginning of the war, vessels with cargoes for Scandinavian ports have been intercepted by British war vessels and brought back, usually into Kirkwall and, finally, forced by this continual interception of our steamers, we were compelled to make an arrangement with the British authorities to have our vessels call at Kirkwall for examination of cargoes destined for Scandinavian countries. It was in pursuance of this compulsion that the steamship *Llama* mentioned Kirkwall in her documents as a port of call.

Ninth. I am informed by the master of the steamship *Llama* that on the morning of October 29, 1915, the steamship *Llama* was captured, seized and detained by a British ship of war and that a Naval Lieutenant with a prize crew was put on board her and took entire charge of the steamer and her cargo. Under the command of this Naval Officer the steamship *Llama* started for Kirkwall. While [fol. 275] proceeding towards that port, through Westray, Firth, a route selected by the Prize Officer aforesaid, and different from that intended to be followed by the master, the steamship *Llama* while under the command, orders and direction of the said Prize Officer, ran on a rock and in spite of prompt and efficient efforts to save her, her cargo and freight, she slipped off the rock and sank, becoming a total loss. Her freight and cargo were totally lost with her.

Tenth. The circumstances under which the stranding and consequent total loss of the steamer, her cargo and freight occurred are fully set forth in the extended protest of the master made at the port of Dundee, Scotland, November 13, 1915, a true copy of which is hereto annexed, marked Schedule O, and in the affidavit of the master, dealing in detail with the courses steered and orders given by the Naval Officer above mentioned, which is hereto annexed, marked Schedule P. Said Schedules O and P are hereby made a part of this affidavit.

Eleventh. The Standard Oil Company submits that the loss of the steamship *Llama* as aforesaid was due to the arrest, restraint and detainment of the British Admiralty Authorities, and was a consequence of warlike operations, and that accordingly, the loss of the steamship *Llama* was due to causes falling within the risks insured by Policy No. 1269 issued by the Treasury Department of the United States of America, through the Bureau of War Risk Insurance, on October 16, 1915, in which the freight on the cargo of the steamship *Llama* for the voyage aforesaid was insured up to \$45,000.

Twelfth. The Standard Oil Company has incurred expenses in attempting to save the steamship *Llama*, her cargo and freight after said stranding. The nature and amount of these expenses are as follows:

Allowance to the steamship Wico for going to the assistance of the steamship Llama .....	\$2,872.98
[fol. 276] Cable expenses incurred in connection with the sinking of the steamship Llama .....	209.75
Wages and maintenance of members of the crew who remained by the steamship Llama from the time of her stranding until the time of her sinking .....	271.88
Bill rendered by and paid to the British Admiralty for services in connection with the stranding £73:13:4 at 4.75 .....	349.92
Total .....	<u>\$3,704.53</u>

Thirteenth. The premiums on said policy No. 1269 have been duly paid, and the Standard Oil Company has, in all respects, complied with all the warranties contained in said policy.

Fourteenth. The insurance effective on the steamship Llama and her freight at the time when she became a total loss, as aforesaid, was:

Policy covering hull, machinery, etc., U. S. A. War Risk Bureau .....	\$115,000
Policy covering freight U. S. A. War Risk Bureau ....	\$45,000

That, with the exception of the above, there was no other insurance covering the vessel or freight against War Risk perils.

David F. Warden.

Sworn to before me, this 30th day of December, 1916. M. H. Eames, Notary Public. (Seal.) Notary Public King's County. Certificate filed in New York County. Certificate No. 13.

Cleared by D. T. Warden, Agent, 26 Broadway, New York

### Outward Foreign Manifest

Report and Manifest of the Cargo Laden at the Port of New York on Board the American S. S. Llana, whereof T. Clinch is Master (or Conductor), Bound for Copenhagen, Denmark, via Kirkwall

New York, October 13th, 1915.

Marks	Numbers	Packages and contents	Quantities, gallons	No. 1			No. 2			No. 3			No. 4			No. 5			Country of ultimate destination
				Value of domestic merchandise	Value of foreign merchandise	Value of foreign merchandise from bonded warehouse	Value of foreign merchandise not from bonded warehouse	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	
None																			
{M} O. T.	1/300	Gas oil in bulk	1,473,116	\$47,876															Denmark
		300 bbls mineral colza oil	15,230 lbs	1,523															"
{D. D. } P A		dry glue	10,842	1,084															"
Copenhagen																			

Copenhagen

This is to certify that the above cargo has been laden on board under direct supervision of United States customs inspectors and that all cargo hatches have been sealed with the official seal of the United States.

John Farrell, Deputy Collector of Customs. (Seal.)

Collector's Office, Oct. 18/16.

I hereby certify the above to be a true copy of the original on file in this office.

John Farrell, Deputy Collector. NJD. (Seal.)

Fee, 20 Cents ✓

BY N. J. D.

Port of New York.

[fol. 278]

## Schedule B

Extract from Letter from the Det Danske Petroleums Aktieselskab to the Standard Oil Co. (N. J.), Foreign shipping Department, Dated June 2, 1915.

Unless you have not already arranged a Gas Oil boat loading for us in July, and probably written us to that effect, we shall be much pleased if you will kindly advise at your very earliest convenience which steamer you can arrange for us to carry this cargo.

---

 Schedule B 1

## Confirmation of Cablegram

From D. T. Warden, New York,  
 To Danske Petroleums Aktieselskab, Copenhagen.  
 Dated, July 24th, 1915.  
 No. —.  
 Time sent, 1.15 P. M.  
 Confirmed by Letter.  
 P. C. L. C O.

Have arranged steamer Platuria early August Copenhagen account Skandinavisk;  
 steamer Pioneer your account Copenhagen early August;  
 steamer Polarine Malmo Stockholm, early August;  
 steamer Muskogee Gothenburg Stockholm middle August;  
 steamer Llama Gas Oil Copenhagen late August.  
 Telegraph filling orders steamer Pioneer Polarine Muskogee.  
 Warden.

[fol. 279]

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 Schedule B 2

Extract from Letter from the Det Danske Petroleums Aktieselskab to the Standard Oil Co. (N. J.), Foreign Shipping Department, dated July 30th, 1915.

## S. S. "Llama"

From your telegram through Messrs. Piesse & Sons, which reached us here on July 28th, A. M., we are pleased to note that you have arranged to give us S. S. "Llama" for a cargo of Gas Oil to Copenhagen after completion of her present trip to Stockholm, to be ready for loading at your side about end of August.

Enclosed we beg to hand you for orders sake Shipping List No. 350 with particulars.

## Schedule B 3

## Copy

No. 350.

Copenhagen, July 30th, 1915.

## Shipping Particulars for S/S. "Llama"

Consignee: Det Danske Petroleums-Aktieselskab.

Destination: Copenhagen.

Cargo Consist of: Entire cargo about 4,200 tons of Gas Oil (Flash Test not below 90° C. on Pensky-Martens apparatus).

Port of loading: New York.

Cargo to be invoiced to: Det Danske Petroleums-Aktieselskab.

Drafts: Instructions.

Vessel to load on contract: —.

Invoicing price (f. o. b. Port of loading): —.

Tare: —.

Reduction: —.

Vessel expected to arrive at port of loading: About end of August.

Remarks: —.

Det Danske Petroleums-Aktieselskab.

[fol. 280]

## Schedule B 4

Extract from Letter from the Standard Oil Co. (N. J.), Foreign Shipping Department, to Det Danske Petroleums Aktieselskab, dated August 25th, 1915.

Contracts.—I beg to enclose herewith confirmations of the following purchases made for your account:

Contract #230, dated August 19th, covering cargo of Gas Oil to be shipped by the S. S. "Llama."

I purchased this cargo for your account as soon as I got cable advice that this steamer had sailed from Copenhagen for New York on August 16th. You will note that contract for this cargo is also made out on a delivery basis, freight being figured at the rate of 42/6 per ton.



## Schedule B 5

(Copy)

Copenhagen, September 10, 1915.

Standard Oil Company, Shipping Department, New York.

DEAR SIRs: We would here ask you to ship by the first tank-steamer, loading for Copenhagen, 25 barrels of dry glue in oak barrels.

Yours very truly, Det Danske Petroleums Aktieselskab.

25 barrels were ordered but we agreed to supply them with 30 barrels. (E. N.)

[fol. 281]

## Schedule B 6

(Copy)

Det Danske Petroleums Aktieselskab

Kjobenhaven B den Sept. 15, 1915.

Mineral Colza Oil

Standard Oil Company, Shipping Dept., New York.

DEAR SIRs: We telegraphed you this day—through Messrs Piesse & Sons, London,—asking you to ship by s. s. "Pioneer" loading end of September for Copenhagen, 300 barrels of Mineral Colza oil, which we beg to confirm.

We further want by the next steamer for Conpenhagen loading in October/November 300 barrels of the same quality, which please note.

Yours very truly, (Sgd.) Det Danske Petroleums-Akteselskab.  
Christian Holm, Adm. Direktor.

## Schedule B 7

Extract from Letter from the Standard Oil Co. (N. J.), Foreign Shipping Department, to the Det Danske Petroleums Aktieselskab, Dated N. Y., Oct. 6, 1915.

SS. "Llama."—Repairs to this steamer will probably be completed by the end of this week, and she is expected to tender ready for cargo Saturday, October 9th.

I received instructions from you by letter to ship by first steamer available for Conpenhagen 300 barrels Mineral Colza Oil, also 30

barrels of Dry Glue, and I have arranged to ship these two lots by the SS "Llama."

[fol. 282] Contracts.—I beg to enclose confirmation of Addition to Contract No. 230, covering the 300 barrels Mineral Colza Oil, also 30 barrels Dry Glue to be shipped by the s/s "Llama." The price of the Mineral Colza Oil is 10¢ per gallon free-alongside-vessel, to which must be added delivering and loading expenses. The price for the Dry Glue is 10¢ per lb. The barrels are to be charged extra at 1.26½¢ each, plus lighterage and expenses for delivering and loading.

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Schedule C

Standard Oil Co. (New Jersey)

Dated: Aug. 19, 1915. #230.

Please enter order for Det Danske Petroleums Aktieselskab about 29,000 Bulk—barrels Gasoil 32/35 94/95 @ 3¢ f. o. b., plus freight 2.99¢, privilege per gallon delivered @ 5.99¢.

Vessel ready, abt. Sept. 2nd at New York.

Cargo, s/s Llama for Copenhagen.

Standard Oil Co., (New Jersey), Foreign Shipping Dept.,  
Per Otto Schleurrner.

(Rubber stamped:) Standard Oil Co. Incorporated in New Jersey,  
by W. R. Mook, agent.

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Schedule D

[fol. 283]

Standard Oil Co. (New Jersey),

Foreign Shipping Dept.,

26 Broadway

New York, August 19th, 1915.

Det Danske Petroleums Aktieselskab, Copenhagen.

Order No. 230

DEAR SIRs: I beg to confirm the following order, dated today:

Quantity, about 29,000 B/Bbls.

Quality and Brand, Gas Oil 32/35° 94/95°.

v. r. about October 7th, 1915.

Destination, Copenhagen.

to be shipped by the following vessel from New York: American  
s/s "Llama"

Price of goods alongside vessel 5.99¢ per gallon delivered subject to the rules of the New York Produce Exchange.

Plus Insurance Premiums for War Risk on steamer, freight & cargo, also Marine Insurance on cargo.

Freight, 42/6 per ton—2.99¢ per gallon.

Rate of exchange, \$4.67.

Standard Oil Co., (New Jersey), Foreign Shipping Dept.,  
Per Schl.

[fol. 284]

### Schedule E

Payable at the office of the Standard Oil Company (N. J.), Commercial Trust Building, 15 Exchange Pl., Jersey City, N. J., in New York or Jersey City Exchange.

Standard Oil Company (Incorporated in New Jersey),

Foreign Sales Department

Order No. 5400.

Works: Bayonne.

Jersey City, N. J., October 12th, 1915.

Sold to Det Danske Petroleums Aktieselskab, terms cash, shipped via s/s "Llama."

Marks	Price	Amount
..... Gas Oil 32/35° B 1,473,116 gallons....	5.99	\$88,239.65

Destination: Copenhagen.

(Rubber stamped:) Checked by machine per M. R. M. Duplicate.  
Det Danske Petroleums Aktieselskab. Correct, per D. Hallow.

### Schedule F

(Copy)

Oct. 2, 1915.

Mr. James G. Newcomb, agent, room #305, building.

DEAR SIR: Please enter order for thirty (30) barrels Dry Glue to be delivered to the s/s "Llama."

This steamer is now in port and will be ready for cargo the end of next week. She will probably load at Bayonne, and I will give [fol. 285] you further instructions in regard to delivery later on.

This order is for account of Det Danske Petroleums Aktieselskab. Please render bills in duplicate for this Company.

Kindly confirm this order and let me know the price of this Glue.  
Yours very truly, D. T. Warden. OS/H. (L.)

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Schedule G

(Copy)

Standard Oil Company (New Jersey)

Cooperage Dept.

26 Broadway, New York, Oct. 2, 1915.

Mr. D. T. Warden, room 106, building.

DEAR SIR: We acknowledge receipt of your letter of even date in connection with 30 bbls. Dry Glue for account Det Danske Petroleum Aktieselskab for s/s "Llama."

This material we will arrange to get ready at once. Price 10¢ per lb. barrels \$1.26½ each extra.

Yours truly, Jas. G. Newcomb, per JM. H. (L.)

[fol. 286]

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Schedule H

Standard Oil Co. (New Jersey),

Lubr. Oil Dept.

Dated: Oct. 2, 1915. (Additl. #230.)

Please enter order for Det Danske Petroleum Aktieselskab (300) Three hundred gallons, barrels, cases, Mineral Colza oil 300° @ 10 per Gallon f. t. v.

Privilege @ —.

Vessel ready Oct. 5/10th at N. Y.

Part Cargo, s/s Llama, for Copenhagen.

Standard Oil Co. (New Jersey), Foreign Shipping Dept.,  
Per Otto Schleurrner.

(Rubber stamped:) Accepted. Standard Oil Co. (N. J.), Lubricating Dept. H. D. Williams.

[fol. 287]

## Schedule I

Standard Oil Co. (New Jersey),  
Foreign Shipping Dept.

26 Broadway, New York, October 4th, 1915.

Det Danske Petroleums Aktieselskab, Copenhagen.

Additional to Order No. 230

DEAR SIRs: I beg to confirm the following order, dated October 2nd, 1915:

Quantity, 300 Barrels Mineral Colza Oil.  
Quality and brand, 30 Barrels Dry Glue.  
Probable Clearance, About October 7th, 1915.  
Destination, Copenhagen.

to be shipped by the following vessel from New York: American s/s "Llama."

Price of goods alongside vessel Mineral Colza 10¢ per gallon f. t. v. plus freight & loading expenses. Dry Glue, 10¢ per lb. \$1.26½ plus ltge., freight & loading expenses Extra, subject to the rules of the New York Produce Exchange.

Plus Insurance Premiums for War Risk on steamer, freight & cargo also Marine Insurance on cargo.

Yours truly, Standard Oil Co. (New Jersey), Foreign Shipping Dept., per Schl.

[fol. 288]

## Schedule J

Payable at the office of the Standard Oil Company (N. J.), Commercial Trust Building, 15 Exchange Pl., Jersey City, N. J., in New York or Jersey City Exchange.

Standard Oil Company (Incorporated in New Jersey)

Order No. 2645.

Works: Eagle.

Jersey City, N. J., Oct. 11, 1915.

Sold to Det Danske Petroleums Aktieselskab.

Shipped to Copenhagen.

Classification: S.S. Llama.

Gross..... 125,904  
Tare..... 21,201

Net.. 104,703    Marks: M. OT.

Grade	Bbls.	Gallons	Price	Amount
300 M C	300	15230	10 ss.	1,523.00
		1/up		

(Rubber stamped:) Checked by machine per M. R. M. Det Danske Petroleums Aktieselskab. Triplicate. Correct. Per D. Hallow.

[fol. 289]

## Schedule K

Payable at the office of the Standard Oil Company (N. J.), Commercial Trust Building, 15 Exchange Pl., Jersey City, N. J., in New York or Jersey City Exchange.

Standard Oil Company (Incorporated in New Jersey)

Cooperage Dept.  
Works: Bayonne.

Jersey City, N. J., October 11th, 1915.

Sold to Det Danske Petroleums Aktieselskab.  
Shipped to Copenhagen, Sweden.

Works No. K-9.

Acet'g No., K 28C.

Your Order No. —, Route Via SS Llama.

Thirty (30) barrels dry glue.

Frt.

Gross .....	12,860 lbs.
Tare .....	2,018 lbs.

Net .....	10,842 lbs.	@ .10	1,084.20
Thirty (30) barrels .....		@ 1.26½	37.95
			<u>1,122.15</u>

Marked:     { DD }  
              P     A  
              Copenhagen.

(Rubber stamped:) Checked by machine per M. R. M. Comp-tometer checked L. E. C. Room 908. Det Danske Petroleums Aktieselskab. Duplicate. Correct. Per D. Hallow.

[fol. 290]

## Schedule L

Standard Oil Co. (New Jersey)

Jersey City, October 12th, 1915.

Invoice for Full Cargo of Gas Oil in Bulk & Mineral Colza Oil & Dry Glue in Barrels

Shipped per American s/s "Llama," New York/Copenhagen, for account and risk of Det Danske Petroleums Aktieselskab, Copenhagen.

Insurance: Covered as below.

## Order No. 230. Per Gall. Del'd

1,473,116 Gallons Gas Oil 32/35°B @ 5.99¢ .....	\$88,239.65
300 Barrels Mineral Colza Oil 15,230 Gallons @ 10¢ per gallon f. t. v. ....	1,523.00
30 Barrels Dry Glue, 10,842 lbs. @ 10¢ per lb. f. t. v. ....	1,084.20
	<hr/>
	2,607.20
	<hr/>
	90,846.85

## Charges

Oil Inspection 4,439 Tons .....	33.29
Consular Fee .....	4.05
(30) Thirty Barrels @ \$1.26½ each .....	37.95
Expenses Loading 300 bbls. ....	.....
Mineral Colza, 30 bbls. ....	.....
Dry Glue .....	158.33

## Insurance Premiums

War Risk: Steamer, \$115,000 at 3% ....	3,450.00
Brokerage 5% on .....	172.50
War Risk: Freight \$45,000 @ 1¾% ....	787.50
Brokerage 5% on \$35,000, 2½% on balance .....	34.99
[fol. 291]	
War Risk: Cargo, \$67,000 @ 1.65 .....	1,105.50
Marine: Cargo, \$67,000 @ 1.51 .....	1,011.70
Freight on 300 Barrels Mineral Colza Oil, 30 Barrels Dry Glue .....	.....
61.95 Tons @ 42/6—£131-12-11 @ \$4.8665 .....	640.65
	<hr/>
	7,436.46
	<hr/>
	\$98,283.31

Invoice payable on discharge of cargo.

(Rubber stamped:) Checked by machine per M. R. M. Dupli-  
cate. Correct. Per D. Hallow.

## Schedule M

(Cut of Ship)

Shipped in apparent good order and condition by Standard Oil Co., (New Jersey) on board the American Steamship called the "Llama," whereof Clinch is master, now lying in the Port of New York and bound for Copenhagen via Kirkwall. To say full cargo

of gas oil 32/35° in bulk, 1,473.116 payable gallons of 6¾ lbs. each to be delivered at the port of Copenhagen, or so near thereto as she can safely get unto Det Danske Petroleum's Aktieselskab, or to his or their assigns, he or they paying freight at the rate of as agreed.

Contents, quality, weight and gauge unknown.

Not responsible for leakage or deterioration of quality—General average payable according to York-Antwerp Rules 1890.

It is mutually agreed that the ship shall have liberty to sail without pilots; to tow and assist vessels in all situations; to deviate for [fol. 292] the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods, and, in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship.

It is also mutually agreed, that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause wheresoever occurring; by barratry of the master or crew, by enemies, pirates, or robbers, by arrest and restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, marines, or other servants of the ship owner, not resulting, however, in any case from want of due diligence by the owners of the ship or any of them or by the Ship's Husband or Manager); nor for heating, decay, putrefication, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk, or transshipment; nor for any loss or damage caused by the prolongation of the voyage.

1. It is also mutually agreed that the carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewelry, Pictures, Embroideries, Works of Art, Silks, Furs, China, Porcelain Watches, Clocks or for goods of any description which are above the value of \$500 per package, unless bills of Lading are signed therefor, with the value therein expressed, and a special agreement is made.

[fol. 293] 2. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such Shipper be Principal or Agent, and such goods may be thrown overboard or destroyed at any time without compensation.

3. Also, that the Carrier shall have a lien on the goods for all fines or damages which the ship or cargo may incur or suffer by reason of the incorrect or insufficient marking of packages or description of their contents.



4. Also, that in case the Ship shall be prevented from reaching her destination by Quarantine, the Carrier may discharge the goods into any Depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

5. Also, that if the goods be not taken by the Consignee within such time as is provided by the regulations of the port of discharge, they may be stored, by the Carrier at the expense and risk of their owners.

6. Also, that full freight is payable on damaged goods but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

7. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the shipper.

8. Also, that in the event of claims for short delivery when the Ship reaches her destination, the price shall be the market price at the port of destination on the day of the Ship's entry at the Custom House, less all charges saved.

And finally, in accepting this Bill of Lading, the Shipper, the Owner, and Consignee of the goods and the holder of the Bill of Lading, agree to be bound by all of its stipulations, exceptions and [fol. 294] conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee, or Holder.

In witness whereof, the Master or Agent of the said Ship hath affirmed to (3) three Bills of Lading all of this tenor and date, numbered consecutively, one of which being accomplished, the others to stand void.

It is also mutually agreed, that this shipment is subject to all terms and provisions of, and to all the exemptions from liability contained in the Act of Congress of the United States relating to Navigation, &c., approved on the 13th day of February, 1893.

Dated in New York this 13th day of October, 1915.

20 hours consumed in loading entire cargo.

Thos. E. Clinch, Master.

#### Schedule N

(Cut of Ship)

Mineral Colza Oil. Marked: {M}O. T. 1/300.

Dry Glue. Marked: {D. D.} P. A. Copenhagen.

Shipped in apparent good order and condition by Standard Oil Co., (New Jersey) on board the American Steamship called the "Llama," whereof Clinch is master, now lying in the Port of New

York and bound for Copenhagen via Kirkwall. To say 300 barrels mineral Colza Oil 300° (containing 15,230 gallons); 30 barrels Dry Glue (gross weight 12,860 lbs.) to be delivered at the port of Copenhagen, or so near thereto as she can safely get, unto Det Danske [fol. 295] Petroleums Aktieselskab, or to his or their assigns, he or they paying freight at the rate of as agreed.

Contents, quality, weight and gauge unknown.

Not responsible for leakage or deterioration of quality—General average payable according to York-Antwerp Rules 1890.

It is mutually agreed that the ship shall have liberty to sail without pilots; to tow and assist vessels in all situations; to deviate for the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods, and, in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship.

It is also mutually agreed, that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause wheresoever occurring; by barratry of the master or crew, by enemies, pirates, or robbers, by arrest and restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, marines, or other servants of the ship owner, not resulting, however, in any case from want of due diligence by the owners of the ship or any of them or by the Ship's Husband or Manager); nor for heating, decay, putrefication, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor [fol. 296] for risk of craft, hulk, or transshipment; nor for any loss or damage caused by the prolongation of the voyage.

1. It is also mutually agreed that the carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewelry, Pictures, Embroideries, Works of Art, Silks, Furs, China, Porcelain, Watches, Clocks or for goods of any description which are above the value of \$500 per package, unless bills of Lading are signed therefor, with the value therein expressed, and a special agreement is made.

2. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such Shipper be Principal or Agent, and such goods may be thrown overboard or destroyed at any time without compensation.

3. Also, that the Carrier shall have a lien on the goods for all fines or damages which the ship or cargo may incur or suffer by reason

of the incorrect or insufficient marking of packages or description of their contents.

4. Also, that in case the Ship shall be prevented from reaching her destination by Quarantine, the Carrier may discharge the goods into any Depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

5. Also, that if the goods be not taken by the Consignee within such time as is provided by the regulations of the port of discharge, they may be stored, by the Carrier at the expense and risk of their owners.

6. Also, that full freight is payable on damaged goods but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

7. Also, that if on a sale of the goods at destination for freight and [fol. 297] charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the shipper.

8. Also, that in the event of claims for short delivery when the Ship reaches her destination, the price shall be the market price at the port of destination on the day of the Ship's entry at the Custom House, less all charges saved.

And finally, in accepting this Bill of Lading, the Shipper, the Owner, and Consignee of the goods and the holder of the Bill of Lading, agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee, or Holder.

In witness whereof, the Master or Agent of the said Ship hath affirmed to (3) three Bills of Lading all of this tenor and date, numbered consecutively, one of which being accomplished, the others to stand void.

It is also mutually agreed, that this shipment is subject to all terms and provisions of, and to all the exemptions from liability contained in the Act of Congress of the United States relating to navigation, &c., approved on the 13th day of February, 1893.

Dated in New York this 13th day of October, 1915.

20 hours consumed in loading entire cargo.

Thos. E. Clinch, Master.

[fol. 298]

## Marine Extended Protest

Ship, Llama; Master, Thomas Edward Clinch

American Consular Service

Port of Dundee, Scotland, November 13, 1915.

By this public instrument of declaration and protest be it known and made manifest unto all to whom these presents shall come or may concern, that on the— day of —, one thousand nine hundred and fifteen, before me, E. Haldeman Dennison, American Consul for Dundee, Scotland, and the dependencies thereof, personally came and appeared Thomas Edward Clinch, Master of the ship or vessel called the Llama, of Bayonne, New Jersey, of the burden of 2011 tons or thereabouts, then lying in this port of —, laden with gas oil cargo, who duly noted and entered with me, the said Consul, his protest, for the uses and purposes hereafter mentioned; and now, on this day, to wit, the day of the date hereof, before me, the said Consul, again comes the said Thomas Edward Clinch, and requires me to extend this protest; and together with the said Thomas Edward Clinch also comes John Caldwell, 1st assistant engineer, Carpenter, — — and — —, Seamen, of and belonging to the said ship, all of whom, being by me duly sworn on the Holy Evangelists of Almighty God, did severally voluntarily, freely, and solemnly declare, depose, and state as follows, that is to say: That these appearers, on the 13th day of October, 1915, in their capacities aforesaid, sailed in and with the said Llama from the port of New York, U. S. A., laden with gas oil, and bound to the port of Copenhagen, Denmark, via Kirkwall, Scotland; that the said ship was then tight, staunch, and strong; had her cargo well and sufficiently stowed and secured; had her hatches well secured; was well and sufficiently [fol. 299] manned, victualed, and furnished with all things needful and necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake; that\* the said ship proceeded on the said intended voyage as above stated until she reached a point about 400 miles westward of the Orkney Islands, when she was boarded by a British Naval Prize Crew on the morning of October 29th, Noup Head of Westray was made about 4 miles to northeast about 8 p. m. on the evening of the 30th the master decided to lie off land until daylight; that on Sunday the 31st day of October, 1915, at 8 a. m. the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction, blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the firth. The vessel was holding a course south magnetic which was considered safe by the master and by the naval officer in charge of the prize crew. The vessel was proceeding at full speed 8 Knots. When about half a

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\*Here insert narrative of the facts of the voyage as they occurred, with full and minute particulars, with dates, latitude, longitude, etc.

mile south-west of the Skerries which lie off- Berst Ness, Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result; that the vessel was assisted by two British torpedo boats about 11-30 a. m. one of the wire hawsers broke and fouled the propeller. This rendered the engines of the vessel useless about 1 p. m. The vessel was swung completely round with the rock as a pivot under the forepart of the vessel. In the master's opinion the vessel was badly holed under all part forwards of amidships. The vessel remained fast; that the loss of the ship is estimated by the master at unknown pounds sterling and on the said cargo at unknown pounds sterling and that the ship was not insured except insurance against [fol. 300] war risk, the cargo in unknown pounds sterling and the freight in unknown pounds sterling; that in consequence of the stranding of the said ship no lives were lost, all, namely, master, 36 crew and no passengers being saved by an Admiralty tug and subsisted on board that vessel from the vessel to Kirkwall; that the following provisions valued at unknown were transferred from the wreck to the salving vessel—crews effects only; that in the master's opinion the cause of the casualty was a submerged and uncharted rock and could not have been avoided; that on Sunday, October 31st, when it was seen that there was no likelihood of the ship being got off, the crew under the charge of the chief officer and 3rd assistant engineer were sent ashore about 3-30 p. m. The rest of the officers remaining on board the Admiralty tug, the fires in the main boilers of the vessel having previously been drawn. This course was deemed necessary on account of the heavy laboring of the ship and the danger of gas explosion from oil. On Monday, November 1st, the weather being fine and water calm, attempts were made to lighten the vessel by pumping all cargo so as to enable her to float over the top of the rock, and for this purpose the donkey boiler fire was lighted about 11 or 12. About 2-30 it was discovered that there was a heavy leak of oil in the fire room from No. 7 tank, in consequence of which the fires were drawn. The crew who had been recalled to the ship were ordered to leave her to return to Kirkwall, the chief officer standing by in an Admiralty boat. On Tuesday morning, November 2nd, it was decided that the crew were of no longer of use to the ship, and it was resolved to send them home. Accordingly 27 of the crew with the 3rd officer and 3rd engineer having been paid off, in presence of the American Consular Agent At Kirkwall were sent to Aberdeen with a view of being sent back to the United States. The cook, a Dane, was at his own request returned to Denmark on a diverted ship then lying at Kirkwall. Between 7 and 8 p. m. that evening it was reported that the conditions of the ship [fol. 301] were getting worse and the Admiralty, in consequence ordered the remaining members of the crew to leave the islands. The master and 1st assistant engineer being allowed to remain to look after the ship's interests. The chief engineer, chief officer, second officer, second assistant engineer and wireless operator, having been paid a certain sum to account of what was due them, were sent to Dundee with a view to their transportation to the United States,

leaving on Thursday morning, November 4th at 8 o'clock. All subsequent attempts at salvage proved unsuccessful. In consequence of heavy gales which continued from November 5th till November 9th when, the weather moderating the master proceeded to make an inspection of the ship and found nothing remaining except about 40 ft. of the fore-mast which was helling over at an angle of 45 degrees. Returning to Kirkwall, the master reported to the American Consular Agent that the vessel was a total loss, ship and cargo, and that he had abandoned her and notified the owners and agents to the same effect.

And these said appearers, upon their oaths aforesaid, do further declare and say: That during the said voyage they, together with the others of the said ship's company, used their utmost endeavors to preserve the said Llama and cargo from all manner of loss, damage, or injury. Wherefore the said Thomas Edward Clinch, Master, hath protested, as by these presents I, the said Consul, at his special instance and request, do publicly and solemnly protest, against all and every person and persons whom it doth or may concern, and against the winds, and waves, and billows of the seas, and against all and every accident, matter, and thing, had and met with as aforesaid, whereby and by reason whereof the said Llama or cargo already has, or hereafter shall appear to have, suffered or sustained damage or injury. And do declare that all losses, damages, costs, charges, and expenses that have happened to the said Llama or cargo, or to either, are and ought to be borne by those to whom the same by [fol. 302] right may appertain by way of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of the said Llama, her tackle or apparel, or default or neglect of this appearer, his officers, or any of his mariners.

This done and protested in the port of Dundee, Scotland, this 13th day of November, in the year of our Lord one thousand nine hundred and fifteen.

In testimony whereof, these appearers have hereunto subscribed their names, and I, the said Consul have granted to the said Master this public instrument, under my hand and the seal of this Consulate, to serve and to avail him, and all others whom it doth or may concern, as need and occasion may require.

E. H. Dennison, Consul of the United States. (Seal.)

Tariff Fee No. 25. No fee charged. Service No. 132. Thomas Edward Clinch, Master. John Caldwell, 1st Asst. Engr.

UNITED STATES OF AMERICA,

State of New York,

County of New York, ss:

Christian Peter Jensen, being duly sworn, says:

1. At the present time I am second officer of the steamship El Paso of the Southern Pacific Company. At the time of the loss of the steamship Llama I was third officer on board her. I have been going to sea since the year 1906 and hold a Second Officer's Certifi-

cate from the New York Board of Steamship Inspectors. I was born in Denmark and am a naturalized American citizen.

[fol. 303] 2. I joined the Llama shortly before she sailed from New York on the trip on which she was lost.

3. On October 22, 1915, when we were about 400 miles to the westward of Orkney Island, Scotland, we were boarded by a British Naval Lieutenant and Prize Crew who took charge of the steamer and, thereafter, all courses and manœuvres were under the direction of the Prize Officer.

4. My watch was from 8 to 12 a. m. and from 8 to 12 p. m. I remember that on the evening of October 30, 1915, land was sighted shortly before I came on watch. We did not attempt to go into Kirkwall that night but lay off intending to go in the next morning.

5. I came on watch the next morning, October 31, at 8 a. m. and shortly thereafter the Prize Officer started the ship in to Westray Firth. When we started in the British Prize Officer, the Captain and I were on the bridge and there was a man at the wheel.

6. I took the time and I remember that it was about ten minutes after I came on watch that Noup Head, which I understand was the land we first sighted, was abeam and about 2 to 2½ miles distant. At that time we were steering S. ½ W. by Standard Compass and continued steering on that course until about 8:25. The Captain and Prize Officer, who had left the bridge to get some breakfast, returned about this time and went into the chart house, which was just back of the bridge.

7. At about 8:40 the Prize Officer noticed a headland which he pointed out to the helmsman and ordered him to steer for it. When our course was set so as to head us toward this headland we were on a course by the Standard Compass of Southeast.

8. Subsequently, the Prize Officer and Captain went into the chart room again and when they came out changed the course to S. by E. ¾ E. The course was altered accordingly and we kept on this course until the Llama struck.

[fol. 304] 9. We went on the course S. by E. ¾ E. at about 8:53. About this time the Captain went into the chart house and the Prize Officer remained on the bridge. A few minutes later, and about five minutes before the ship stranded, I saw breakers on the port bow. I looked at them through my glasses and assured myself that they were breakers and that it was shoal water in that direction. There was not any sign of breakers ahead. I should say that if we had gone on we would have passed these breakers about one-half mile off on the port side.

10. When I saw the breakers I called the attention of the Prize Officer to them and I said to him: "Holy gee! There are shoals there. We are pretty close into them, aren't we?" I also asked him the name of the shoal. He replied that he was not sure of the



name, but he mentioned several names that it might be. Then I said to him: "We are going pretty close into them, aren't we?" He said: "No, that is all right."

11. The reason that I called the Naval Officer's attention to the breakers was that he was on the bridge and I knew that he was in charge of the ship and responsible for the courses we were steering and, therefore, I wanted to be assured by him that the course we were on was a safe course. He was supposed to know the waters and we did not have any pilot except him to take us in.

12. In view of his assurance to me I did not think it necessary to haul off or report the matter to the Captain. We continued on the course, and about five minutes afterwards the Llama struck.

13. The time entered in the log book for the stranding is 9:07, but, as I recollect it, it was about 9:10. The bow of the steamer rose considerably and at first I thought we had struck a mine. The Captain rushed out of the pilot house and said: "It is a mine." The Prize Officer who was standing there also thought that it might be a mine. There were not any breakers at the place where the [fol. 305] Llama struck, but soundings taken after she had been stranded for about two hours indicated that she was on the edge of the Skea Skerries.

14. I remained by the ship until 4 o'clock in the afternoon, when I went to Kirkwall. I returned the next day and left again that evening for Kirkwall. On the following day, November 2, I was sent home to the United States.

15. The Llama was going at full speed when she struck.

Christian Peter Jensen.

Sworn to before me, this 25th day of May, 1917. Goulding  
K. Wight, Notary Public, New York County, No. 316.  
(Seal.)

United States District Court. Steamship Llama. Total Loss.  
Copy. Affidavit of Christian Peter Jensen. Kirlin, Woolsey &  
Hickox, Proctors for —, 27 William Street, New York, N. Y.



[fol. 306] In the Matter of the Claim of THE STANDARD OIL COMPANY (OF NEW JERSEY) for the Total Loss of the Steamship Llama, Her Cargo and Freight, under Policy Number 1269.

Second Affidavit of David T. Warden on Claim for Total Loss of Freight on S/S Llama

STATE OF NEW YORK,  
County of New York, ss:

David T. Warden, being duly sworn, says:

1. I am manager of the Foreign Shipping Department of the Standard Oil Company, a Corporation of the State of New Jersey, hereinafter called the Standard Oil Company, and as such I have under my control and management steamships owned by that company.

2. On December 30, 1916, I verified an affidavit in this claim in which the details of the claim were fully set forth. I hereby refer to that affidavit and incorporate it as a part of this affidavit as if it were herein again fully set forth.

3. Under date of January 24, 1917, a request was made by the Director of the War Risk Bureau of the Treasury Department for the submission of certain additional information and documents, and in pursuance thereof this affidavit is made and the documents accompanying this and my affidavit of even date in respect of Policy Number 1263 are submitted to the Department.

4. I submit herewith the master's, or deck, log book, the chief engineer's log book and the scrap log book of the steamship Llama covering the voyage in question on which she was lost, and I respectfully ask that these log books be considered as submitted both in the claim under Policy Number 1269 and in the claim under Policy Number 1263.

[fol. 307] 5. I annex hereto as Schedule A a sworn statement of the third officer, Christian Peter Jensen, verified May 25, 1917, as the occurrence leading up to the stranding and loss of the steamship Llama.

6. I annex hereto as Schedule B copy of a letter dated October 8, 1915, addressed to Captain Clinch of the steamship Llama from my office, the original of which was signed in my behalf, instructing him as to coaling, cabling, stores, provisions, insurance, future movements and preparing the steamship Llama for cargo on her next return to the United States.

7. I annex hereto as Schedule C copy of a letter dated October 8, 1915, addressed to Captain Clinch of the steamship Llama from my

office, dealing with steamer routes. The two letters, copies of which are hereto annexed, are all the sailing orders which the Captain of the steamship Llama received.

8. In the copy of letter, marked Schedule C, dealing with steamer routes, I instructed the Captain to make a voluntary call at Kirkwall.

This instruction as well as the provisions of the vessel's documents that she should proceed to Copenhagen via Kirkwall was arranged not as a voluntary matter so far as the Standard Oil Company was concerned, but was an expedient adopted in agreement with the British Authorities with the view of minimizing the very great delays that had previously occurred in connection with the uniform seizure of all our vessels bound to Scandinavian ports at remote distances from Kirkwall and the takings of the ships into that port for examination in charge of prize crews.

9. We had a great deal of correspondence with regard to the seizure and long detention of other vessels of our Company, which had been on this route, with our representatives in London, Messrs. Piesse & Sons. I annex hereto, as Schedule D hereof, copy of a letter dated [fol. 308] January 30, 1915, to Piesse & Sons; as Schedule E hereof, copy of a letter to me from Piesse & Sons dated February 9, 1915; as Schedule F hereof, copy of a letter from Piesse & Sons to me dated February 19, 1915; as Schedule G hereof, copy of a letter from me to Piesse & Sons, dated February 23, 1915, and as Schedule H hereof, copy of a letter from Piesse & Sons, dated March 19, 1915, acknowledging my letter dated February 23, 1915.

10. As a result of this correspondence and subsequent negotiations with the British Ambassador here, had through our counsel, it was provided that, in order to satisfy the British Authorities, our vessels when going to Scandinavian ports should be documented via Kirkwall under pain of indefinite detention if they were not so documented. Prior to this arrangement our vessels had been detained for periods of ten days to three weeks, and it was expected that action under it would reduce the delays to a very few days.

11. The object of going to Kirkwall was that the British Authorities might search the vessel easily and satisfy themselves of the neutral destination of the cargo and the propriety of the vessel's papers. It was not in any sense a voluntary call, such as would have been the case if, in normal times, the vessel had been documented as she was on this occasion.

In normal times, if she had been proceeding from New York to Copenhagen, or other Scandinavian ports, there would not have been any provision for a call at Kirkwall.

12. The steamship Llama was actually seized by the British Authorities and taken into Kirkwall, in spite of the fact that the Captain was instructed to go there, and it was while she was in the possession, under the control, and being navigated by the British Prize Officer on courses prescribed by him that she struck the rocks on which she was lost.

[fol. 309] 13. It was the custom of the British war vessels which were watching for vessels northward of Scotland to put prize crews on board any vessel which they encountered, because the prize crew had the latest information with regard to mine fields and the Government preferred to take vessels into Kirkwall in its own way rather than leave it to the masters to navigate them on their own responsibility. If the steamship Llama had not encountered a British Naval Officer she would have proceeded to Kirkwall through different passage from that actually followed by the prize crew. But inasmuch as she was met and seized by a war vessel it was the normal procedure to have a prize crew put on board to take her in upon the courses, by the route and in the manner directed by the Prize Officer.

14. The reason for the delay in filing this affidavit has been that we were not able to locate Mr. Jensen, the third officer, to secure his affidavit, which is submitted herewith, until May 25, 1917. And inasmuch as the correspondence with Piesse & Sons was not written in connection with the steamship Llama case it took us a great deal of time and effort to find the letters. The pressure of other work has also contributed to the delay, otherwise this affidavit would have been submitted earlier in the summer.

15. It is respectfully submitted, therefore, that the Standard Oil Company of New Jersey is entitled to a full recovery under Policy Number 1269.

David T. Warden.

Sworn to before me, this 27th day of September, 1917. D. J. Daverin, Notary Public, Westchester County. (Seal.)  
Certificate filed in New York County. County Clerk's  
No. 147. Register's No. 9112.

[fol. 310] UNITED STATES OF AMERICA,  
State of New York,  
County of New York, ss:

Christian Peter Jensen, being duly sworn, says:

1. At the present time I am second officer of the steamship El Paso of the Southern Pacific Company. At the time of the loss of the steamship Llama I was third officer on board her. I have been going to sea since the year 1906 and hold a Second Officer's Certificate from the New York Board of Steamboat Inspectors. I was born in Denmark and am a naturalized American citizen.

2. I joined the Llama shortly before she sailed from New York on the trip on which she was lost.

3. On October 22, 1915, when we were about 400 miles to the westward of Orkney Islands, Scotland, we were boarded by a British Naval Lieutenant and Prize Crew who took charge of the steamer and, thereafter, all courses and manœuvres were under the direction of the Prize Officer.

4. My watch was from 8 to 12 a. m. and from 8 to 12 p. m. I remember that on the evening of October 30, 1915, land was sighted shortly before I came on watch. We did not attempt to go into Kirkwall that night but lay off intending to go in the next morning.

5. I came on watch the next morning, October 31, at 8 a. m. and shortly thereafter the Prize Officer started the ship in to Westray Firth. When we started in the British Prize Officer, the Captain and I were on the bridge and there was a man at the wheel.

6. I took the time and I remember that it was about ten minutes after I came on watch that Noup Head, which I understand was the land we first sighted, was abeam and about 2 to 2½ miles distant. At that time we were steering S. ½ W. by Standard Compass and continued steering on that course until about 8:25. The Captain and Prize Officer, who had left the bridge to get some breakfast, re-[fol. 311] turned about this time and went into the chart house, which was just back of the bridge.

7. At about 8:40 the Prize Officer noticed a headland which he pointed out to the helmsman and ordered him to steer for it. When our course was set so as to head us towards this headland we were on a course by the Standard Compass of Southeast.

8. Subsequently, the Prize Officer and Captain went into the chart room again and when they came out changed the course to S. by E. ¾ E. The course was altered accordingly and we kept on this course until the Llama struck.

9. We went on the course S. by E. ¾ E. at about 8:53. About this time the Captain went into the chart house and the Prize Officer remained on the bridge. A few minutes later, and about five minutes before the ship stranded, I saw breakers on the port bow. I looked at them through my glasses and assured myself that they were breakers and that it was shoal water in that direction. There was not any sign of breakers ahead. I should say that if we had gone on we would have passed these breakers about one-half mile off on the port side.

10. When I saw the breakers I called the attention of the Prize Officer to them and I said to him: "Holy gee! There are shoals there. We are pretty close in to them, aren't we?" I also asked him the name of the shoal. He replied that he was not sure of the name, but he mentioned several names that it might be. Then I said to him: "We are going pretty close into them, aren't we?" He said: "No, that is all right."

11. The reason that I called the Naval Officer's attention to the breakers was that he was on the bridge and I knew that he was in charge of the ship and responsible for the courses we were steering and, therefore, I wanted to be assured by him that the course we were on was a safe course. He was supposed to know the waters and we did not have any pilot except him to take us in.

[fol. 312] 12. In view of his assurance to me I did not think it necessary to haul off or report the matter to the Captain. We continued on the course, and about five minutes afterwards the Llama struck.

13. The time entered in the log book for the stranding is 9:07, but, as I recollect it, it was about 9:10. The bow of the steamer rose considerably and at first I thought we had struck a mine. The Captain rushed out of the pilot house and said: "It is a mine." The Prize Officer who was standing there also thought it might be a mine. There were not any breakers at the place where the Llama struck, but soundings taken after she had been stranded for about two hours indicated that she was on the edge of the Skea Skerries.

14. I remained by the ship until 4 o'clock in the afternoon, when I went to Kirkwall. I returned the next day and left again that evening for Kirkwall. On the following day, November 2, I was sent home to the United States.

15. The Llama was going at full speed when she struck.

Christian Peter Jensen.

Sworn to before me, this 25th day of May, 1917. Goulding K. Wight, Notary Public, New York County, No. 316.  
(Seal.)

[fol. 313]

New York, Oct. 8, 1915.

Captain Thomas E. Clinch, American S. S. "Llama," New York.

DEAR SIR: The Cargo which your steamer will load at New York, namely, a full cargo of Gas Oil in bulk, is to be delivered to Det Danske Petroleums Aktieselskab, Copenhagen.

The consignees of your vessel's cargo will advise you upon arrival at Copenhagen in regard to your agents; they will also arrange for the payment of your steamer's disbursements.

Coaling: You will please leave New York with all the coal it is possible for your steamer to carry, consistent with her proper trim, draft and safety.

With reference to coaling abroad, we have recently arranged, through the Anglo-American Oil Company, Ltd., London, for the Copenhagen Bunkers Coal Depot to supply our steamers with their coal requirements at Copenhagen for the balance of the year.

We are advising the suppliers that your steamer will require about 500 to 600 tons of Coal for the return voyage.

The price of the coal is 41/-per ton, free on board, ex. Depot.

We are requesting Det Danske Petroleum Aktieselskab to pay for the quantity of coal taken by your steamer against your receipt.

Freight: The freight on your vessel's cargo will be adjusted through this office.

Cabling: Det Danske Petroleum Aktieselskab will cable me your arrival at and departure from Copenhagen. Please be sure to give

[fol. 314] them the quantity of coal remaining on board on your arrival at and departure from that port, in order that they may include this information in their cables to us; also be sure to enquire whether these cables have been dispatched.

Stores, Provisions, etc.: Your steamer will be supplied at New York with a complete outfit of Stores, Provisions, etc., for the voyage; it should, therefore, not be necessary for you to purchase abroad any provisions other than fresh meat and vegetables for port use and sea stock.

Insurance: Your steamer and freight have been insured against war risk with the U. S. Bureau of War Risk Insurance, but there is no ordinary marine insurance on this vessel.

Future Movements: It is the present intention to have your steamer return to the United States in ballast after discharge at Copenhagen; we will, however, endeavor to give you definite instructions by cable in this respect if it is possible to communicate with you. In the absence of any instructions to the contrary, please return to New York and report your position to me by wireless as soon as you can get into communication with this coast. Please keep a lookout for wireless messages from me when approaching this coast, in case we may desire you to load your next cargo at some other port than New York.

When reporting your position to me by wireless on your return voyage please state in your message if there are any repairs that will require the use of fires, and whether your steamer is in position to commence loading promptly on arrival.

Your vessel's pipe lines and valves should all be tested before your arrival here, in order that you may know whether they are tight and thus avoid delay after the vessel goes into berth.

Preparing Steamer for Cargo: On your return voyage (if the weather permits) you should steam out all tanks, giving particular [fol. 315] attention to those which have contained nap-tha, and be sure that they are free from gas.

After the tanks have been steamed and you are satisfied that they contain no gas, such of the tanks as it is not necessary to keep ballast in should be washed out and dried, so that some of the tanks will be ready for loading on arrival.

Please give this matter your particular attention, and have your steamer ready for cargo as far as possible when you arrive in port.

Wishing you a safe and speedy voyage, I remain,

Yours very truly, David T. Warden. GHH/L. D.

P. S.—In addition to the bulk cargo, the S. S. "Llama" is to load 300 barrels of Mineral Colza Oil and 30 barrels of Dry Glue, consigned to Det Danske Petroleum Aktieselskab, for discharge at Copenhagen.

I may mention that the glue is intended for gluing the insides of barrels.

D. T. W. David T. Warden.

(Rubber stamped:) Copy. S. O. Co.

[fol. 316]

New York, October 8, 1915.

Captain Thomas E. Clinch, S. S. "Llama," New York.

## Steamer Routes

DEAR SIR: On your coming voyage you will please make a voluntary call at Kirkwall before proceeding to Copenhagen, the same as you did on your last voyage to Scandinavia, in order to give the British authorities an opportunity to examine your steamer's cargo and documents, and we trust that you will not suffer any detention at Kirkwall.

Please telegraph your arrival at and departure from Kirkwall to me and to Messrs. Piesse & Sons, 15 Old Jewry Chambers, London E. C. If you have any small expenses at Kirkwall for provisions, etc., and have not sufficient money to pay for same, you may draw for the amount of your disbursements on Messrs. Piesse & Sons, advising them by telegraph the amount of your draft.

When leaving Kirkwall, we think it advisable for you to proceed straight across the North Sea until you make the Norwegian Coast, then follow that coast until you reach the Lindesnas (Naze Light-house) when the regular course can thereafter be followed.

We understand that all lights on the Swedish Coast are still extinguished; consequently it is very important that you take every precaution in navigating the Kattegat.

I attach hereto, for your information, copy of a decree issued by the Swedish Government concerning special safety measures to be observed in navigating certain waters, to which please give your attention.

Yours very truly, D. T. Warden. GHH/L. (D.)

[fol. 317]

New York, January 30th, 1915.

Messrs. Piesse &amp; Sons, 15 Old Jewry Chambers, London, E. C.

## S. S. "Pioneer"

GENTLEMEN: The American tank steamer "Pioneer" (formerly the German S. S. "Kiowa"), belonging to us, is expected to leave New York tomorrow with a cargo of Refined Petroleum (Illuminating Oil) for Copenhagen, Denmark, and Gothenburg, Sweden.

The Captain has been instructed to take the route north of Scotland and pass between the Orkney and Shetland Islands.

We have told Captain Harry S. Morris, who is in command of this steamer, that in the event of his obtaining any information during the course of the voyage which would make him consider that a continuation of the voyage would be attended with great hazard, he is to put in at a convenient English or Scottish port and report his arrival there to you, giving you full particulars of the information he has obtained.



I enclose herewith copy of a letter which I have written to Captain Morris in this connection.

Should you hear from Captain Morris, will you be good enough to telegraph me the circumstances as fully as possible, in order that we may have an opportunity of going into the matter and be in a position to give you further instructions regarding the movements of this steamer.

I may mention that the Gothenburg portion of this steamer's cargo is for delivery to the Vestkustens Petroleums Aktiebolag, while the cargo for Copenhagen is to be delivered to Det Danske Petroleums Aktieselskab.

The cargo has been loaded under the supervision of a Customs inspector and an affidavit obtained from him to this effect. The [fol. 318] manifest has also been vised by the British and French Consuls. Certificates have been obtained from the Swedish and Danish Consuls in which it is stated that the exportation of Petroleum is prohibited from their respective countries. These certificates are on board.

Yours very truly, D. T. Warden. RFH/L.

Piesse & Sons

15 Old Jewry Chambers,  
London, E. C., Feb. 9th, 1915.

DEAR SIR: We have a communication from the Foreign Office here requesting us to furnish them with a complete list of the vessels in which the Standard Oil Company are interested which have been transferred from an Enemy to a Neutral flag since the outbreak of the present European war. We immediately attended at the Foreign Office and enquired as to the connection in which they require this information and were informed that the Admiralty had asked for it. We then attended at the Admiralty and made the same enquiry of them and they informed us that they required the information for the purpose of issuing instructions to the British fleet that the transfer of these vessels from an enemy to a neutral flag had been recognized, so that in future these vessels would not be detained for the purpose of investigation as has happened in the past.

We received yours of the 29th ulto. yesterday morning respecting the S. S. "Polarine" informing us that this vessel would shortly be leaving Philadelphia for Rotterdam and describing the course she would be taking and that you had requested the Captain to immediately report to us if at any time on the voyage he was detained. [fol. 319] While at the Admiralty yesterday we brought this matter up and gave them full particulars as far as we could of this vessel's departure from Philadelphia and the route she would be taking and as to her cargo and port of destination, and we were able to obtain from them a statement that they would immediately particularly instruct the British fleet to the effect they had full particulars of this vessel and she should be allowed to proceed to Rotterdam with as little delay as possible.



In these circumstances we cabled you to-day as follows:

"Send us by next mail complete list of all vessels which have been transferred from enemy to American flag and now owned by your Company giving former and present name. British Admiralty ask for this in connection with issuing instructions to fleet that British Government have recognized transfer and in order to prevent unnecessary delay of these vessels in future. Have given Admiralty all particulars respecting voyage cargo and destination cargo of Polarine Philadelphia Rotterdam and have arranged for them issue instructions to fleet to allow her to proceed on voyage without delay. Piesse."

which we now confirm.

We have also arranged with the Admiralty that in all future cases, if we would before hand give them all particulars of any vessel belonging to your Company with an approximate date of its arrival in the channel they would issue orders to the fleet to let her proceed to her destination with as little delay as possible, and therefore if you will bear this in mind and let us have this information we will in each case go to the Admiralty and make the necessary arrangements accordingly.

We think by doing this we may be able to save a great deal of delay to all your vessels and shall be pleased to receive any instructions from you at any time and they shall be promptly carried out. [fol. 320] You will of course immediately acquaint us from time to time in the event of any vessel of enemy nationality being transferred to your Company and the American flag, so that we may keep the list to be supplied to the Admiralty complete and up to date at all times.

Yours faithfully, (Sgd.) Piesse & Sons.

D. T. Warden, Esqre., Standard Oil Company, Shipping Department, 26 Broadway, New York, N. Y., U. S. A.

Piesse & Sons

15 Old Jewry Chambers,  
London, E. C., February 19, 1915.

DEAR SIR:

S. S. "Pioneer"

We received your letter of the 30th ulto. on the 15th inst. and immediately gave all the necessary particulars to the Admiralty concerning this vessel, but as all vessels on the north of Scotland route are taken into Kirkwall by the British Fleet for examination, unless they have already obtained permission to pass along this route, we expected that this vessel would be taken in. Yesterday evening we received a telegram from Captain Morris stating that he was detained at Kirkwall. We immediately went to the Admiralty and as

we had already given them the full particulars well ahead, the vessel was released the same day and no doubt she left Kirkwall this morning.

[fol. 321] We cabled you to-day as follows:

"Pioneer detained Kirkwall yesterday released to-day. In future "instruct all vessels passing north Scotland to call voluntarily and "report at Kirkwall otherwise taken there and delayed."

this we confirm.

In future we suggest that you should follow the same course as you have done in this case, that is to say: write us well ahead giving us full particulars of the vessel's departure, cargo destination, consignees etc. and we will then go to the Admiralty and obtain the necessary permission for the vessel to pass on this course, but in all instances the vessel must call off Kirkwall and report herself and she will then probably be allowed to proceed without delay. Unless she does this she will be taken into Kirkwall and may be unnecessarily delayed.

Yours faithfully, (Sgd.) Piesse & Sons. D.

D. T. Warden, Esqre., Standard Oil Company, Foreign Shipping Dept., 26 Broadway, New York, N. Y., U. S. A.

(Rubber Stamped:) Copy. S. O. Co.

[fol. 322]

(File 825)

New York, N. Y., Feb. 23, 1915.

Messrs. Piesse & Sons, 15 Old Jewry Chambers, London, E. C.

GENTLEMEN: With reference to the suggestion in your telegram of the 19th instant that in the future we should instruct all of our vessels taking the north of Scotland route to call voluntarily and report at Kirkwall, otherwise that they would be taken there and delayed:

We saw this suggestion made in newspaper reports some time ago, but it was our feeling that it would not be wise for us to act in accordance therewith, for two reasons:

1. We would be in the position of voluntarily sending our neutral steamers, bound to neutral ports, into belligerent territory, the wisdom of which course we are inclined to seriously question.

2. We know of no reason for detaining these neutral steamers and cargoes. So far as the transfer of the flag is concerned, Great Britain and France have both had several of our steamers in their custody, and have taken no exception to the transfer.

Our steamers are being loaded under the supervision of the United States Customs authorities, who certify the manifest to be correct. Besides this, the manifest is vised, whenever we can get it done, by the British, and, where necessary, the French Consul.

The steamers also take forward declarations issued by the Consul of the country of destination—that is, Norway or Sweden—that the exportation of oil from these countries is prohibited.

Our steamers further take forward affidavits by the suppliers of the cargoes declaring exactly what the cargoes consist of.

[fol. 323] In going to all this trouble and expense in order to satisfy the officers of any war vessels boarding the ships, and hoping that the British authorities are now satisfied that the destination of our ships and their cargoes are correctly shown and bona fide in every way, we feel that we should not consistently be asked to stop in at Kirkwall, or any other port, which naturally means detention and extra expenses, to say nothing of the danger involved.

It is our understanding that the waters around the Orkney Islands are mined, and therefore dangerous, and that we are running a very great risk in sending our steamers into these waters. It is our sincere desire to keep our steamers as far as possible out of the danger zone, and we are very desirous of sending them by the open route north of the Shetland Islands when bound to Scandinavian ports, where, I believe, the risk of danger from mines can be very greatly minimized, if not altogether avoided.

Our steamers are insured against war risk by the United States Government Bureau established for this purpose, but we have no desire to collect war risk insurance on these steamers; on the contrary, our wish as above indicated is to do everything possible to keep them out of the zone of danger.

Upon a full review of your question, we feel that the British Government should not ask us to put our ships, with their neutral cargoes, voluntarily into their custody, but what they should, themselves, assume the responsibility for any action they may see fit to take towards compelling the ships to deviate from their voyage and enter belligerent ports, necessitating expense and detention to us.

We have given you this somewhat full explanation of our position for your own information and are assuming that it may not be necessary for you to report same to the British authorities.

Yours very truly, David T. Warden. DTW/L. (D.)

[fol. 324]

15 Old Jewry Chambers,  
London, E. C., March 19, 1915.

DEAR SIR:

North of Scotland Route

Referring to your letter of the 23rd ulto, we have duly noted contents but somewhat doubt the advisability of sending your vessels north of the Shetland Islands on the assumption that the risk of danger from mines will be minimized if not altogether avoided. In the first place on going north of the Shetlands the vessels are a long way out of their course and we think it will result in their being brought into Kirkwall all the same. However you will act as you think best and must take this suggestion for what it is worth.

Yours Faithfully, Piesse & Sons. D.

D. T. Warden, Esqre., Standard Oil Company, Foreign Shipping  
Dept., 26 Broadway, New York, N. Y., U. S. A.

[fol. 325] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 9

The United States of America,

Department of Commerce,

Bureau of Navigation

Bill of Sale of Registered Vessel

(Secs. 4170, 4171, 4192, 4193, 4194, and 4196, Revised Statutes,  
and Arts. 53 and 55, Customs Regulations of 1908.)

To all to whom these presents shall come, Greeting:

Know ye that\* Deutsch-Amerikanische Petroleum-Gesellschaft, a German Company Limited, with the seat at Hamburg; Registered Owners of the screw steamer or vessel called the "Brilliant" of the burden of 3189 gross 2011 net tons, or thereabouts, for and in consideration of the sum of Fifty Thousand (\$50,000.00) dollars, lawful money of the United States of America, to us in hand paid, before the sealing and delivery of these presents, by† Standard Oil Company, a corporation of the State of New Jersey, the receipt whereof we do hereby acknowledge and are therewith fully satisfied, contended, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said† Standard Oil Company, its successors, and assigns, the whole of the said steamer or vessel, together with all the masts, bowsprit, sails, boats, anchors, cables, tackle, furniture, and all other necessities thereunto appertaining and belonging; the foreign Certificate of Registry of which said steamer or vessel is as follows, viz:

[fol. 326] Form A—Form for Ships with Deck

German Empire

Kind of Ship—Screw Tank Steamer.

Name of Ship—"Brilliant."

Signal Letters—K. R. F. B.

Nationality—German.

Home Port—Hamburg.

\*Here insert the names of the vendors, and the part conveyed by each.  
†Here insert the names of the vendees, and the part conveyed to each.

## Letter of Ship's Measurement

## Description of Ship

Name of Builder—Sir W. G. Armstrong, Mitchell & Co.

Year of Construction—1890.

Town of Construction—Newcastle on Tyne.

Material—Steel.

Construction—Partly Double Bottom Plates lapped.

Number of Decks—Two.

Kind of Upper Deck—Shelter.

Number of Watertight Bulkheads Under and Over Measurement Deck—12.

Number of Water Ballast Compartments with Cargo Hatches: —.

Kind of Ceiling: —.

Shape of Bow—Straight.

Shape of Stern—Elliptical.

Number of Smokestacks—1.

Number of Masts—3.

Rig—Schooner.

## Measures of Identity

1. Length of ship between aft side of stern and aft side of stern frame in ships with patent rudder to centre of rudder on the uppermost solid deck is..... 97.09 M.
  2. Greatest breadth of ship between the outside of the board's ceiling or the walls is..... 12.80 M.
- [fol. 327]
3. The depth of ship's hold between under side of the uppermost solid deck and the upper side of bottom pieces alongside of the keelson or the upper side of the inner iron double bottom if existing in the centre of the length under No. 1 is..... 8.99 M.
  4. The greatest length of the engine room including the permanent coal bunkers which lay between the board to board reaching bulkhead is..... 21.34 M.

## Results of Measurement

Gross capacity	C. B. M.	Deductions	C. B. M.
		I. Space for propelling power:	
1. Space under measurement deck .....	8562.414	1. 32% of gross capacity...	2801.066
2. Space between measurement rack and deck above same.....	.....	2. Engine room after measurement .....	.....
3. Space between first and second deck above measurement deck.....	.....	+ %	
4. Quarter deck cabin or poop .....	.....	II. Crew and navigation rooms:	
5. Forecastle .....	118.480	1. Rooms for sailors, firemen, petty officers, cooks, stewards, etc....	156.298
6. Rooms under bridge deck.	131.690	2. Rooms for officers and engineers, etc.....	123.464
7. Half deck.....	.....	3. Steering rooms, chart rooms, etc.....	10.959
8. Other rooms.....	221.996	4. Sall room.....	.....
9. Contents of hatches to be deducted .....	.....	5. Store room.....	125.076
		III. Room for master....	30.234
Gross capacity.....	9034.580	Total of deductions...	3337.092

	C. B. M.	Reg. tons		C. B. M.	Reg. tons
Gross capacity...	9034.580	3189.207	Result of measurement—		
Deductions .....	3337.092	1177.993	Gross .....	9034.6	3189.21
Net capacity.....	5697.488	2011.214	Net .....	5697.5	2011.21

This letter of ship's measurement has been written out about the — — —. Measuring finished at Hamburg on the 5th of Oct. 1895. Measuring was done by the measuring committee according to the bill of March 1st, 1895.

Hamburg, October 11th, 1895.

Department of Trade and Shipping. First Secretary. (Sgd.) Kircheparer.

[fol. 328]

New York, September 11th, 1914.

I certify this to be a true copy of the Original translated from German.

(Sgd.) Geo. W. Rocklein, Notary Public, Kings County.  
Certificate filed in New York County, #30. (Seal.)

German Empire

Ship's Certificate

This is to certify that the undersigned office on the 22nd May, 1906, has entered the Ship "Brilliant" into the official ship's register under the number 3495 as follows:

1. Name of Ship—"Brilliant."
2. Kind—Screw Steamer built of Steel.

## 3. Signal Letters—K. R. F. B.

4. Result of official measuring—The main measurements after S. 25 Nr. 1 of the ship's measuring bill are:

Length, 97.09 Meter.

Breadth, 12.80 Meter.

Depth, 8.99 Meter.

Greatest length of engine room 21.34 Meter.

The measurement was done after the complete proceeding according to the ship's measurement bill of March 1, 1895 (Imperial Laws 1895, Page 161) and it is:

	Cubic meters	Register, tons
a) Gross Capacity .....	9034.6	3189.21
b) Net Capacity .....	5697.5	2011.21

b) Written in full Five thousand six hundred and ninety seven and five tenths Cubic Meters Equal to Two thousand and eleven 21/100 Register Tons.

5. Time and place where built—1890. Low Walker in England.

[fol. 329] 6. Home port—Hamburg.

7. Ownership—Name, designation; No. and Nationality of Owner, 1, The Stock Company Deutsche-Amerikanische Petroleum-Gesellschaft in Hamburg; shares, 1/1; reason for acquisition, built for account of the company.

This certificate is written out about the above entering. In the meantime it is certified that the Ship "Brilliant" according to the law of June 22, 1899 (Imperial Laws, Page 319), is entitled to fly the flag of the empire and is entitled to all rights, qualities and privileges of a German ship.

Hamburg, 22nd May, 1906, the Ships Register Office.

(Sgd.) Siemsen, Dr.

The head office of the Company is changed to Hamburg.

Hamburg, 10th April, 1911, Ship's Register Office.

(Sgd.) Robinow.

New York, September 11th, 1914.

I certify this to be a true copy of the Original translated from German.

(Sgd.) Geo. W. Rocklein, Notary Public, Kings County. Certificate filed in New York County, #30. (Seal.)

[fol. 330] To have and to hold the said Steamer "Brilliant" and appurtenances thereunto belonging unto them the said Standard Oil Company, its successors, and assigns, to the sole and only proper

use, benefit, and behoof of them, the said Standard Oil Company, its successors and assigns forever: And we the said Deutsch-Amerikanische Petroleum-Gesellschaft have promised, covenanted, and agreed, and by these presents do promise, covenant, and agree, for our successors, and assigns, to and with the said Standard Oil Company, its successors, and assigns to warrant and defend the said vessel and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

In testimony whereof, The said Deutsch-Amerikanische Petroleum-Gesellschaft, by Walter C. Teagle, its duly authorized attorney have hereunto set our hand and seal this 11th day of September, in the year of our Lord one thousand nine hundred and fourteen.

Signed, sealed, and delivered in presence of—Deutsch-Amerikanische Petroleum-Gesellschaft.

(Sgd.) F. D. Asche, by Walter C. Teagle, by — — —, Attorney-in-fact. (Seal.)

[fol. 331] \*STATE OF NEW YORK,  
County of New York, ss:

Be it known, That on this 11th day of September, 1914, personally appeared before me, Walter C. Teagle, Attorney in fact for Deutsch-Amerikanische Petroleum-Gesellschaft and acknowledged the within instrument to be his free act and deed, and the free act and deed of said Company.

In testimony whereof, I have hereunto set my hand and seal this 11th day of September, A. D. 1914.

(Sgd.) M. H. Eames, Notary Public, Kings County. Certificate filed in New York County, certificate No. 9. (Seal.)

BB.

Custom House, Port of New York.

I hereby certify the within to be a true copy of the original Bill of Sale of the steamship "Brilliant" now on file in this office, and the whole thereof, and that the said vessel was registered at this port under the nam "Ilama" on October 8, 1914.

Given under my hand and the seal of the Collector, this twenty-first day of October, 1914.

John Farrell, Acting Deputy Collector.

Fee, 50 cts. JW. JP.

\*This acknowledgment may be made to conform to requirements of State laws.



[fol. 332] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 10

No. 6467.

United States of America,  
Department of State.

To all whom these presents shall come, Greeting:

I certify That the document hereunto annexed is under the Seal of the Department of Commerce, and that such Seal is entitled to full faith and credit\*.

In testimony whereof I, W. J. Bryan, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 9th day of March, 1915.

W. J. Bryan, Secretary of State, by Ben G. Davis, Chief Clerk.  
(Seal.)

[fol. 333] Department of Commerce,  
Bureau of Navigation

Washington, March 8, 1915.

The Commissioner of Navigation, Department of Commerce, United States of America, hereby certifies that the S. S. Llama registered as a vessel of the United States on October 8, 1914, and awarded official number 212682, signal letters L D T K, is, as appears by papers on file with the Bureau of Navigation, Department of Commerce, the property of the Standard Oil Company (New Jersey), a citizen of the United States, and that this Company was the beneficial, actual and entire owner of said vessel prior to May 1, 1914.

Eugene Tyler Chamberlain, Commissioner of Navigation.  
(Seal.)

Attest: E. F. Sweet, Assistant Secretary of Commerce. (Seal.)

(\*For the contents of the annexed document the department assumes no responsibility.)

[fol. 334] IN UNITED STATES DISTRICT COURT

## EXHIBIT L. 11

Department of Commerce

Certificate of Ownership of Vessel

Collector's Office, Customhouse

New York, N. Y., January 31, 1921.

I hereby certify that, according to the records of this office, the Steamship called the Llama, of New York, N. Y., official number, 212682, tonnage, 3189, gross, 2011, net, built at Newcastle-on-Tyne, Eng., in 1890, was last documented in this office October 8th, 1914, and in that document, namely, a Permanent register No. 38, the following were cited as her only owners, viz: Standard Oil Company, incorporated under the laws of the State of New Jersey, and that no sale of said vessel has since been made.

Given under my hand and seal of this office, this 31st day of January, 1921. Hour and minute, 3:45, P. M.

John Farrell, Acting Deputy Collector.

Fee, \$1.00.

[fol. 335] IN UNITED STATES DISTRICT COURT

## EXHIBIT L. 12.

Permanent Register, No. 38.

Official No., 212682.

Letters, L. D. T. K.

Radio Call, K. S. I.

The United States of America,

Department of Commerce,

Bureau of Navigation

Duplicate

Certificate of Registry

Rebuilt at....., 1....	Measured: ....., 1....
Remeasured ....., 1....	Number of crew,..... 33

In pursuance of Chapter One, Title XLVIII, "Regulation of Commerce and Navigation," revised Statutes of the United States, as

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\*After names, addresses, and shares of owners are cited add "and that the following sales of said vessel have since been made."

amended by Sect. 5 of the Panama Canal Act & by the Act of Aug. 18, 1914, entitling the vessel to engage only in trade with foreign countries or with the Philippine Islands & the islands of Guam & Tutuila. This vessel shall not engage in the coastwise trade. David T. Warden of Upper Montclair, N. J., Agent under Act of June 24, 1902, having taken and subscribed the oath<sup>2</sup> required by law, and having sworn<sup>3</sup> that "Standard Oil Company, Incorporated under the laws of the State of New Jersey, is the only owner of the vessel called the "Llama," of New York, N. Y., Hailing Port, Bayonne, N. J., U. S. A., whereof Thomas J. Wheeler is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1890, at Newcastle-on-Tyne, England of<sup>5</sup> steel as appears by<sup>6</sup> copy of register issued to said vessel [fol. 336] under the name of "Brilliant" at Hamburg, Germany on May 22, 1906, and now on file in this office; and<sup>7</sup> said register having certified that the said vessel is a steamship; that she has two decks, three masts, a plain head, and an elliptic stern; that her register length is 318.5 feet, her register breadth 42 feet, her register depth 29.5 feet, her height — feet; that she measures as follows:

	Tons	100ths
Capacity under tonnage deck <sup>8</sup> .....	3022	53
Capacity between decks above tonnage deck.....	....	..
Capacity of inclosure on the upper deck, viz: <sup>9</sup> Fore- castle, 41.82; bridge, 46.49; poop, —; break, —; houses—round, —; side, —; chart, —; radio, —; excess hatchways, —; light and air spaces, — ..	166	67
Other spaces, 78.36.	—	—
Gross tonnage .....	3189	..
Deductions under Section 4153, Revised Statutes, as Amended		
Crew space, 98.75; Master's cabin, 10.67; Steering gear, —; Anchor gear, —; Boatswain's stores, 44.15; Chart house, 3.87; Donkey engine and boiler, —; Radiohouse, —; Storage of Sails, —; Propelling power (actual space, <sup>10</sup> —), 1020.55...		
Total deductions .....	1177	99
Net tonnage .....	2011	..

The following described spaces, and no others, have been omitted, viz:<sup>11</sup> —.

and the said<sup>12</sup> — — having agreed to the description and ad-  
measurement above specified, according to law, said vessel has been  
duly registered at this Port.

[fol. 337] Given under my hand and seal, at the Port of New York, this 8th day of October, in the year one thousand nine hundred and fourteen.

F. Cheney, Deputy Naval Officer. (Place for Seal of Naval Officer.) E. J. Donahue, A Deputy Collector of Customs. (Place for Seal of Collector.)

(Countersigned, rubber stamp:) Eugene Tyler Chamberlain, Commissioner of Navigation.

<sup>1</sup>Insert name and address of person by whom oath or affirmation is made.

<sup>2</sup>Substitute "affirmation" when necessary.

<sup>3</sup>Substitute "affirmed" when necessary.

<sup>4</sup>If there is only one owner, write "he" or "she;" if more than one owner, write "he (or she) owning" and the part owned, "together with" followed by the names of other owners, their shares and addresses.

<sup>5</sup>Write "wood," "iron," "steel," or as required.

<sup>6</sup>Cite surrendered marine document or write "certificate of ———, builder," if first document of a new vessel.

<sup>7</sup>Write "said register," "said enrollment," or "said license." In the first document of a new vessel, give the name and title of the measurer.

<sup>8</sup>Name and give tonnage of each compartment in double bottom and of each peak tank used other than for water ballast which is included herein.

<sup>9</sup>Carry total of all inclosures to spaces at end of next line.

<sup>10</sup>Insert tonnage representing actual machinery space used in ascertaining propelling power.

<sup>11</sup>Name and give tonnage of each space exempted.

[fol. 338] <sup>12</sup>In the first document of a new vessel, give the name of the person countersigning certificate of measurement.

Office of Collector of Customs,

District of New York,

Port of New York

BB.

I hereby certify the within to be a true copy of the original on record in this Office.

Given under my hand and seal this fifteenth day of November, 1916.

John Farrell, Acting Deputy Collector of Customs. (Seal.)

Fee, 20 cts.

NC:JDG.

Port of New York, May 12, 1915.

Thomas E. Clinch having taken the oath required by law, is at present master of the within-named vessel, in lieu of Thomas J. Wheeler, late master.

John Farrell, Dep. Collector of Customs.

[fol. 339] Department of Commerce, Bureau of Navigation. Permanent (permanent or temporary). Duplicate Certificate of Registry No. 38 of the steamship called the Llama, of New York, N. Y. 3189 gross, 2011 net. Issued at the Port of New York, October 8th, 1914.

[fol. 340] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 13.

S/S "Llama"

		Claim of s/s "Wico"
Hull .....	\$115,000.00	\$1,457.48
Freight .....	44,686.82	566.36
Cargo .....	67,000.00	849.14
	<u>\$226,686.82</u>	<u>\$2,872.98</u>
Percentage, .0126737.		

IN UNITED STATES DISTRICT COURT

EXHIBIT L. 14

S/S "Llama"

		Claim of British admiralty
Hull .....	\$115,000.00	\$177.52
Freight .....	44,686.82	68.98
Cargo .....	67,000.00	103.42
	<u>\$226,686.82</u>	<u>\$349.92</u>
Percentage, .0015436.		

## Copy

Wr. 2. (Cut of Seal.) Page —

Examination on Oath Instituted by the Receiver of Wrecks at the  
Port of Kirkwall

Issued by the Board of Trade

In pursuance of the 517th Section of the Merchant Shipping Act, 1894, 57 and 58 Victoria, Cap. 60, at Kirkwall this 2nd day of November, 1915, in presence of Magnus Flett, Deputy Receiver of Wreck at Kirkwall—

1. Names of deponent at full length.

1. Compeared Thomas Edward Clinch being solemnly sworn and examined deposed as follows; namely,

2. State whether deponent is "master," "mate," &c., of the ship; the name of the ship; and particulars as to her tonnage and official number.

If the ship is a steam ship, the fact should be stated as well as the nominal horse power of the engines, and whether paddle or screw.

2. That he is Master of the ship "Llama" stem-screw of the port of Bayonne, New Jersey, U. S. A., of the register tonnage of 2,011 tons, her official number being —

3. Names and residence of owners.

3. That the said ship is owned by Standard Oil Coy residing at 26 Broadway in the City of New York.

4. Particulars of rig, build, age, and class of ship.

4. That the said ship is rigged as a tank steamer that she was built of Iron at Newcastle on Tyne in the year 1890, and that she is classed in German Lloyds as A-1 for four years from October 1915.

[fol. 342] 5. Particulars as to the number of hands composing crew, and as to the certificate of the deponent.

5. That the crew consists of 37 hands, including deponent; that the deponent's certificate is a certificate of Competency as Master, and is numbered (American).

6. Particulars of cargo, and shippers and consignees.

6. That the said ship had on board a cargo of gas oil in bulk and in barrel of the weight of 6,600 tons in bulk and 52 tons in barrel shipped by Standard Oil Coy of New York and consigned to Copenhagen of —

7. Number of passengers on board.

NOTE.—If the wife and children of the master or of any officer of the ship were on board, the fact should be stated.

7. That the said ship had on board in addition to the cargo aforesaid no passengers.

8. Draught of water at time of sailing.

8. That the draught of water of the said ship was Twenty-four feet six inches forward and 26 feet — inches aft.

9. Date and hour of sailing, and state of tide, weather and wind.

9. That the said ship proceeded from New York on her intended voyage as named below, on the 13th day of October last past, at midnight, the tide at the time being unknown, the weather fine, and the wind blowing light breeze from the south east.

10. Any statement as to the condition of hull and cargo of the ship, or of her equipments, life saving appliances, &c., at the time of sailing.

10. That at the time of sailing as above the said ship was in perfect sea going condition in every respect, having just come from under a six weeks' repair and survey. Vessel was supplied with admiralty chart in deponent's opinion, about a year old.

[fol. 343] 11. Limits of intended voyage.

11. That the said ship was bound for Copenhagen in Denmark via Kirkwall.

12. Statement as to the voyage previous to the casualty.

12. That the said ship proceeded on the said intended voyage as above stated until she reached a point about 600 miles westward of the Orkney Islands when she was boarded by a British naval prize crew on the morning of October 29th. Noup Head of Westray was made about four miles to northeast about 8 p. m. on the evening of the 30th. Deponent decided to lie off land until daylight.

13. Particulars of the occasion of the distress of the ship, commencing with the date and hour and the state of the tide, weather, wind, and sea.

13. That on Sunday the 31st day of October at 8 a. m.; the tide at the time being ebb, the weather slightly hazy and the wind in the southerly direction blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the Firth. The vessel was holding a course South

(Written in:) Omission in copying. M. F., Dy. Re. Wr. Magnetic which was considered safe by deponent and by the naval officer of the Prize Crew. Vessel was proceeding at full speed—eight knots, when about half a mile southwest of the Skerries which lie off Berskness Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result.

[fol. 344] 14. Statement respecting the service rendered, if any.

14. That the vessel was assisted by two British torpedo boats, about 11.30 a. m. one of the wire hawsers broke and fouled the propeller. This rendered the engines of the vessel useless.

15. Such other matters or circumstances relating to the ship or cargo on board the same as the Receiver or Justice thinks necessary.

15. About 10 p. m. the vessel was swung completely round with the rock as a pivot under the forepart of the vessel. In deponent's opinion the vessel is badly holed under all the parts forwards off amidship. The vessel remains fast.

16. Loss on ship and cargo, and amount of insurance on ship, cargo and freight.

16. That the loss on the said ship is estimated by deponent at unknown pounds sterling, and on the said cargo at unknown pounds sterling, and that the ship was not insured except insurance against war risk, the cargo in unknown pounds sterling, and the freight in unknown pounds sterling.

17. Particulars of lives lost and saved, &c.

17. That in consequence of the stranding of the said ship no lives were lost, all, viz., master, 36 crew\* and no passengers, being saved by an admiralty Tug, and subsisted on board that vessel from the vessel to Kirkwall. The following provisions, valued at unknown, were transferred from the wreck to the salving vessel crew's effects only.

18. Cause of the casualty.

18. That, in deponent's opinion, the cause of the casualty was a submerged and uncharted rock and it could not have been avoided.

[fol. 345] 19. That the above contents are in all respects correct and true to the best of deponent's knowledge and belief.

(Signed) Thomas E. Clinch, Deponent.

Sworn at Kirkwall this 2nd day of November, 1915, before me. (Signed) Magnus Flett, Dy. Receiver of Wreck.†

Certified a true and correct copy of original deposition.

Magnus Flett, Dy. Receiver of Wreck,

3rd November, 1915.

P. V. W. 6/— 246. C. Rim. Pl. Copy. N. Wr. 2. Port of Kirkwall. Name of Ship, Llama. Port, Bayonne, U. S. A. Date of Casualty, 31/10/15. Date when Deposition taken, 2/11/15. Date when copy sent to Board of Trade and to Lloyd's, 3/11/15. Amount charged, Fee, £1; expenses, nil.

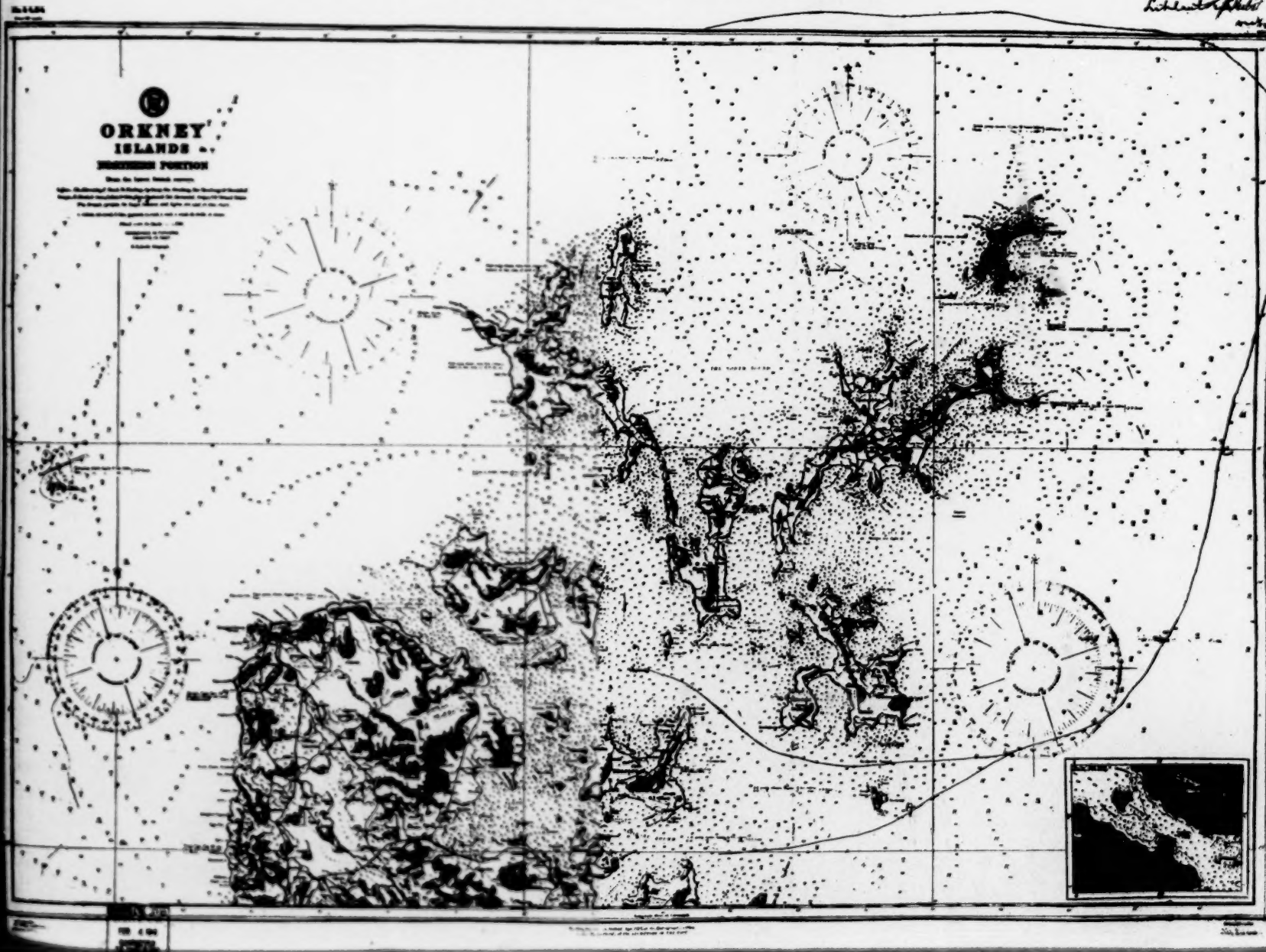
(Here follow exhibits in evidence, marked side folio pages 345a, b, c.)

\*In the number of the crew should be included all officers except the master.  
†Obliterate the words that do not apply.



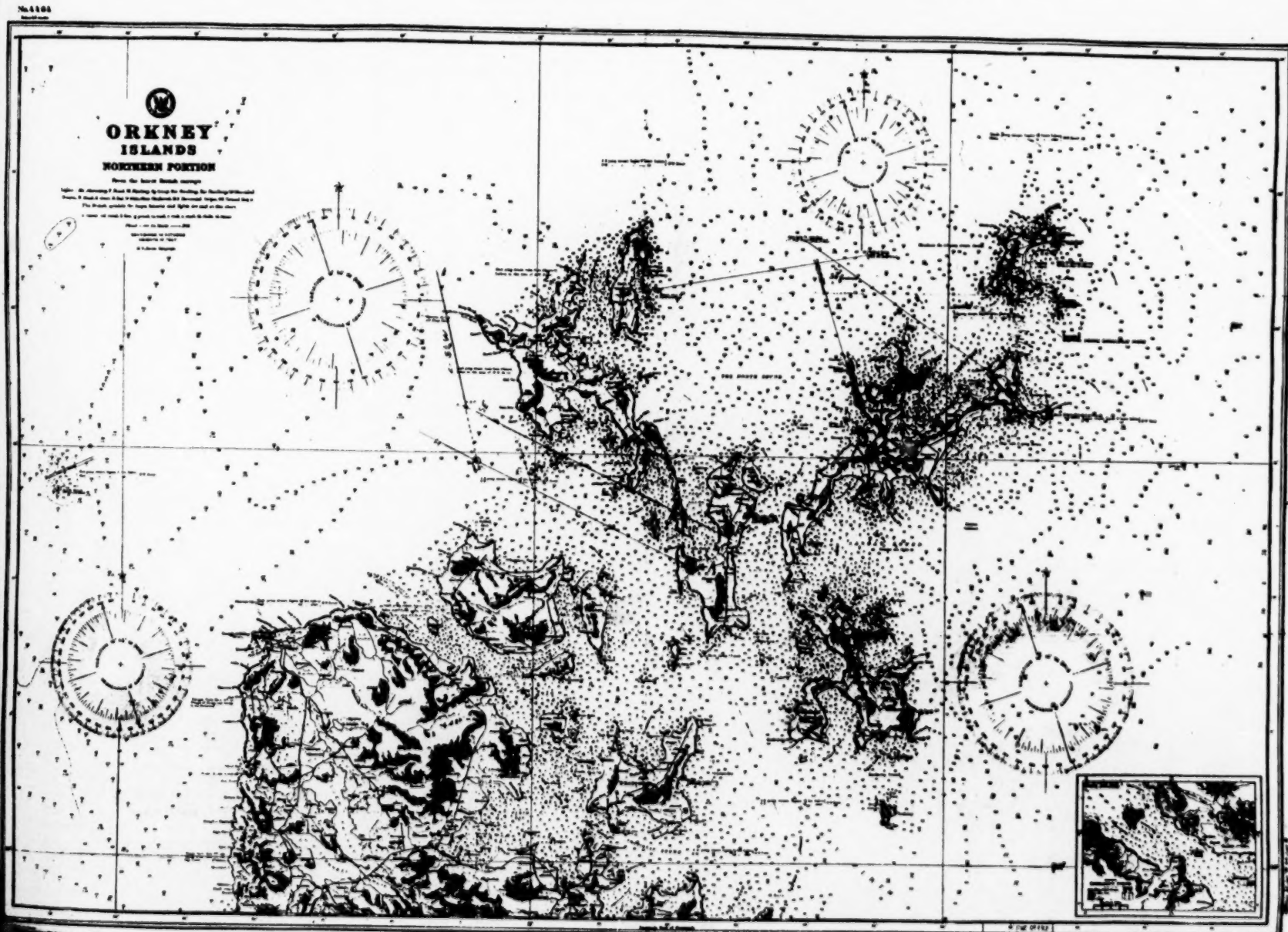
In United States District Court  
Exhibit in Evidence

Lieutenant R. P. Butler

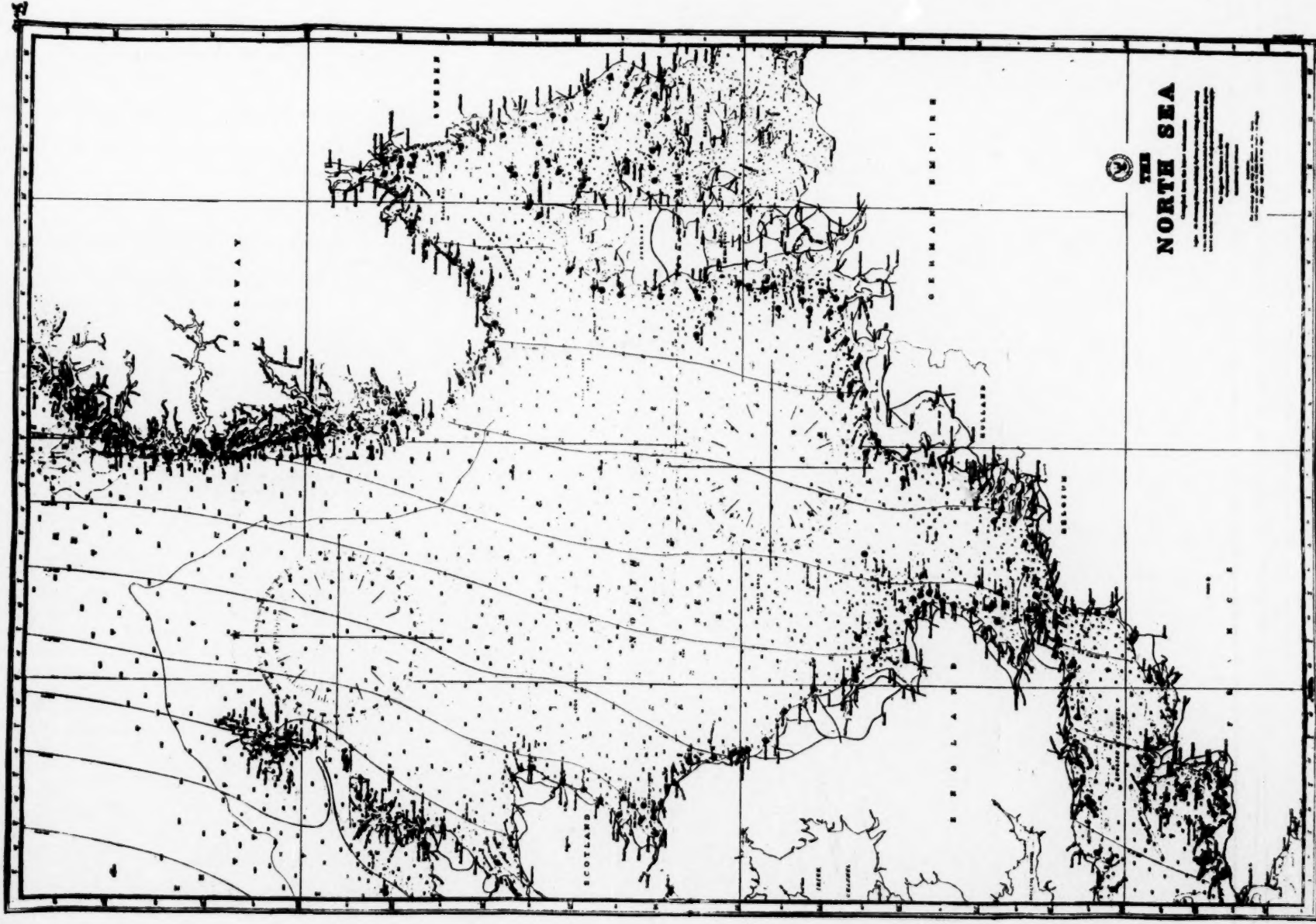


345b

In United States District Court  
Exhibit in Evidence.



345c. In United States District Court - Exhibit in Evidence



DIVISION OF REVENUE  
 APR 12 1962  
 REVENUE OFFICE

[illegible]

[fol. 346] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE  
THIRD CIRCUIT

UNITED STATES OF AMERICA, Appellant,

vs.

STANDARD OIL CO. OF N. J. Owner, etc., S. S. "Llama," Appellee

Appeal from the District Court of the United States for the District  
of New Jersey

ORDER ASSIGNING JUDGE—Filed March 6, 1923

And now, to-wit: this sixth day of March, A. D. 1923, it is ordered that Hon. Charles L. McKeehan, District Judge, for the Eastern District of Pennsylvania, be, and he is hereby, assigned to sit in above case in order to make a full court.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 347] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

SUBMISSION OF CAUSE

And afterwards, to wit, on the sixth day of March, 1923, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, and Honorable J. Warren Davis, Circuit Judges, and Honorable Charles L. McKeehan, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the sixth day of July, 1923, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:



[fol. 348] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Buffington and Davis, Circuit Judges, and McKeehan, District Judge

OPINION—Filed July 6, 1923

BUFFINGTON, Circuit Judge:

X) In the Court below, the Standard Oil Company of New Jersey, in pursuance of authorizing legislation, filed a libel against the United States War Risk Insurance Bureau on two policies of war risk insurance on its steamship "Llama." On final hearing, that Court entered a decree adjudging the insurer liable for the loss of the steamer and from it the insurer took this appeal.

Inquiring as to the question involved in this case, we note that as the owners of the "Llama" assumed all marine risks and as she was lost by stranding, a marine peril, and as such stranding was caused by errors in navigations, also a marine peril, the question involved is whether the insured has shown that the proximate cause of the loss was not these marine perils or errors in navigation and stranding but was a war peril insured against, namely, "takings at sea, arrest, restraints and detentions of all Kings, princes and peoples, of what nation, condition or quality soever, and all consequence of hostilities or warlike operations."

I) The "Llama" sailed from New York for Copenhagen on October 14, 1915. She was routed "via Kirkwall," pursuant to a prior arrangement made by her owner, the Standard Oil Company, so that her documents could be examined. In pursuance thereof, and as had been done on a previous voyage of the "Llama," she was, on October 29, 1915, hailed and stopped by the British cruiser "Virginia," and boarded by a lieutenant and four men. After the examination of her papers, which showed the vessel was duly routed "via Kirkwall," the "Llama" proceeded, the lieutenant and his party remaining on board. He had been directed by the "Virginia" [fol. 349] to see that the "Llama" keep North of Scule Skerry and North Rona, well known landmarks, and not to pass between the islands at night.

Subject to these general directions, the captain of the "Llama," as would appear from the absence from the log of anything indicating a departure from his previous conduct, laid off, entered all courses and gave directions, the entries in the log being "6.59 Stopped by British cruiser in Lat. 58° .56 N. Long. 11° 58 W. 7.30 British naval officer boarded ship with prize crew. 7.31 Eng-aft speed ahead. 7.35 Received order from cruiser to proceed. \* \* \* 8.10 Eng. full speed ahead. \* \* \* 10.30 Hoisted ship's number to British cruiser." The log entries contain the usual recital by name of the ship's officers on watch and of the ship's

men on the lookout. Other than the above the log contains no entry or reference to the cruiser or of the officer and his men aboard the "Llama." The entry of the 30th records that on that night North Rona was reached, viz: "10.35 North Rona abeam dist. off 9'," where the "Llama" hove to for the night at the Noup Head. From Noup Head there were two courses to Kirkwall, one called the Fair Island passage, the other, which the "Llama" took, was called the Westray Firth. The proofs show that the Master of the "Llama" had taken this latter passage on the previous voyage, and that he British officer on board had never taken it.

On the next morning while the "Llama" proceeded through the Westray Firth, where there was an open leaway of some four miles, she struck a submerged but charted reef and stranded. The time was daylight, and the sea conditions, as shown by the log, were "moderate sea, clear;" and the entry in the log "9.07 Struck a reef in Westry Firth."

On November 13, 1915, Clinch, the Master of the "Llama," appeared before the American Consul at Dundee, Scotland, and made oath to a marine protest of the loss, wherein his account thereof was given, as follows:

"The said ship proceeded on the said intended voyage as above stated until she reached a point about 400 miles Westward of the Orkney Islands, where she was boarded by a British Naval Prize Crew on the morning of October 29th, Noup Head of Westray was made about four miles to Northeast about 8 P. M. On the evening of the 30th the Master decided to lie off land until daylight; that on Sunday the 31st day of October, 1915, at 8 A. M., the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction, blowing gustly and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fair way down the firth. The vessel was holding a course South magnetic which was considered safe by the Master and by the naval officer in charge of the prize crew. The vessel was proceeding at full speed 8 knots, when about half mile southwest of the Skerries, which lie off Fersness, Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast."

In addition to the Master, John Caldwell, First Assistant Engineer, [fol. 350] and the carpenter and some seamen, all unnamed, joined under oath in this account of the ship's mishap.

On November 2, 1915, the Master appeared and made statement under oath, at a hearing had by the Deputy Receiver of Wrecks, held in pursuance of the British Shipping Act of 1894, wherein he stated:

"12. That the said ship proceeded on the said intended voyage as above stated until she reached a point about 600 miles westward of the Orkney Islands when she was boarded by a British naval prize crew on the morning of October 29th. Noup Head of Westray was made about four miles to northeast about 8 p. m. on the evening of the 30th. Deponent decided to lie off land until daylight."

13. That on Sunday the 31st day of October, at 8 a. m., the tide at the time being ebb, the weather slightly hazy and the wind in the southerly direction blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the Firth. The vessel was holding a course South magnetic which was considered safe by deponent and by the naval officer of the Prize Crew. Vessel was proceeding at full speed—eight knots, when about a mile southwest of the Skerries, which lie off Berskness Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result.

\* \* \* \* \*

18. That, in deponent's opinion, the cause of the casualty was a submerged and uncharted rock and it could not have been avoided."

From the above extracts it will appear that the loss of the "Llama", as made out by contemporaneous written statements of her log and officers, was due to a marine peril, to-wit: "a submerged and uncharted rock," and that when the ship was struck, the vessel was holding a course "which was considered safe by the Master", and that "it could not have been avoided". The physical fact being that the boat was lost by reason of its stranding, and stranding being prima facie a marine peril, it follows the burden is on the ship's owner to show that the stranding was caused by one of the war risks insured against as heretofore quoted; *Monroe v. War Risk Ass'n*, 34 Times L. R. 331. This burden, the Court below was of opinion the insured met, finding in substance that at the time of the stranding the "Llama" was controlled and navigated by the British lieutenant, who boarded her.

After a study of the proofs, we reach a conclusion different from that of the Court below, and that in the light of the facts and law, the libel should be dismissed.

In reaching that conclusion we start, not only with the prima facies against the "Llama" arising from her loss by a marine peril, but with a heavy burden of proof arising against her by reason of the fact that no contention, assertion or even suggestion was made by the captain, when he was called upon to account for the stranding, of any dominating control by the British officer. The silence of the log on that point is highly significant. If control of his [fol. 351] ship was taken away from the captain; if its courses were being determined by an alien officer; if its navigation was being directed; if a log is, as its sphere is, to record the history of the voyage, why should it be silent on such an all important thing as the control and navigation of the ship; why should it continue to be written just as it had been written before? Indeed, if we gather an account of subsequent events solely from the log entries, we would not know whether the British lieutenant remained on board, for after the log's entry that he boarded the vessel, there is not only no

statement of his remaining aboard, but the subsequent entries, viz: "Received orders from Cruiser to proceed" and "Hoisted ship's number to British Cruiser", show that all the directions the captain felt worth while for entry in the log referred to those received from the cruiser and not from the lieutenant. Seeing then that both in the comparative privacy of the log and before any situation arose suggesting the recording of evidence on the subject of alien control of the ship, no entry was made indicating such control, we turn to November 2, 1915, when the next evidential statement was made by the captain. The "Llama" had been lost, and he then appeared before the British official, empowered by the British Government (See Sec. 517 of Merchant Shipping Act 1894) to investigate the disaster. Here every circumstance; the opportunity of clearing himself from all blame and responsibility for the stranding; the obligation of his oath, impelled the captain to give a truthful account of how and why the stranding took place. Presumably moved by the two considerations of self-exculpation and truth disclosure, and knowing, as the statement shows he did, that the "Llama" carried insurance against war risks but none against marine, the captain made no statement that he or the vessel was under compulsion, but on the contrary states that her course was one which both he and the British officer considered safe; that she grounded on an uncharted rock and in answer to the inquiry of "the cause of the casualty", he stated that in his opinion "the cause of the casualty was a submerged and uncharted rock and it could not have been avoided." We have here then the deliberate, sworn statement of the captain exculpating himself on the ground the "Llama" had struck an uncharted rock while sailing on a course which he approved and which had also the approval of the British officer, a clear case of loss from a marine peril, and with no suggestion of loss from a war peril and this statement made with knowledge that the vessel had no marine peril insurance, but had war peril insurance. Coupled with the significant absence from the log of any suggestion of control of the [fol. 352] "Llama" by the British officer, the sworn statements made by the captain in this casualty inquiry, alleging the loss was a marine one and with no suggestion of control by the British officer, we have a case of contemporaneous and evidential statements of such convincing nature as made the case one where a contrary state of facts, later set up, should be not only of the most convincing character as to their truth but also explanatory of the silence of the captain when every surrounding circumstance called on him to then make such a statement as he now makes for the libellant. ✓

It is said in his behalf that the captain was averse to making any statement before the British tribunal implicating the British officer by showing the latter was directing the course of the "Llama" and was responsible for her stranding. To this, an answer would be that if the captain's statement described the true situation, there was no call to shift the blame from him to the British officer, for that statement placed the blame not on faulty navigation of either but on the fact of a submerged and uncharted rock. But the case did



not stop with his statement made before an alien official, for on November 13th, the Captain, with an officer and members of the crew, appeared before the American Consul at Dundee and again, under oath, entered a marine extended protest wherein he made no assertion that the ship was under the control of the British officer but, after stating, as he had done in the wreck inquiry, that on the night before "the master decided to lie off the land until daylight" the "Llama" proceeded the next morning on her course and that when she stranded, "the vessel was holding a course South magnetic which was considered safe by the master and by the naval officer in charge of the Prize Crew", he alleged she "suddenly grounded on a submerged and uncharted rock."

If these several statements be accepted as a true and full account of the stranding, we have here a loss from a marine peril and resulting from following a course in which both the captain and the British officer concurred. They suggest no dominating control, no superseding of the captain by the British officer, but on the contrary, the selection of the course by the captain and the justification of that selection by the concurrence of the British officer and so regarded we have the case of a peril and a loss due, not to a war risk, but to a marine peril, for the concurrence of the two men in the course was not something done by stress of war, but at most by the concurrent mistake of two men who were attempting to safely navigate a ship through an open fairway but who mistakingly stranded [fol. 352½] her on a submerged, unknown reef. Taken at its most, the captain thought he was right, the British officer thought the captain was right, but in point of fact, both were wrong. There was nothing partaking of war in the ship going on a submerged, uncharted rock owing to the miscalculation of those directing her course and therefore the cause of the loss, viz: the stranding, the marine character of the peril, is not affected by the one directing the course, whether his or their uniforms were those of a mariner or a naval officer. The stranding was the dominant casual factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint, but mistaken, navigation of the captain and the British officer.

Accepting then, these contemporaneous statements by the captain of the circumstances as correct, his testimony given nearly six years after to the effect that the navigation of the ship was taken out of his hands by the British naval officer and the course over the submerged reef was one selected by the latter and the ship constrained to follow it without his, the captain's concurrence, is not convincing. There is no explanation by the master of his change of position or as to why he did not enter in the log or in the wreck inquiry or consular protest, assert or even suggest, what he now contends, namely, that the British officer was navigating the "Llama" and stranded her on the reef. Standing alone, these circumstances are such as to cause us to question his later testimony, but when to this is added the fact that the captain had taken the Llama through the Westray Firth before but the British officer had never been through it; that the captain admits that when the officer came aboard, he made no state-

ment that he himself was to navigate the vessel or give any instructions to his own men that they were to do so; the captain's self-contradiction on the stand in testifying first, that he had not been court-marshalled and later admitting that he had been court-marshalled for drunkenness, and in further view of the testimony of the British officer that he did not oust the captain's control over the navigation of the ship, we are clear that the libellant has not met the burden resting upon it, of showing that the *causa causans* of the loss was a war risk and not a marine one.

We may refer to other proofs in the case supporting both sides, all of which have had our attention; the testimony of Jansen, the third officer of the "Llama" in support of the captain's later version; [fol. 353] the absence or failure to account for the loss of the chart books in which there might have appeared or been wanting the figuring of courses in confirmation or contradiction of the captain's testimony that the British officer did the charting; and of the fact that while Caldwell, the first assistant engineer, the carpenter and some seamen, were present and were sworn before the Consular inquiry and joined in the account of the loss as then stated by the captain, none of them were called or their absence accounted for in the present proceeding.

The view we have taken of the situation, namely: that the libellant has not satisfied us that the "Llama" was being navigated by the British officer, when she stranded, renders it needless to refer to the many authorities cited, all of which have had our careful examination.

The cause will therefore be remanded to the Court below with directions to vacate its decree and dismiss the libel, the libellant bearing the costs in this Court and in the Court below.

[File endorsement omitted.]

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[fol. 354] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Buffington and Davis, Circuit Judges, and M. Keehan, District Judge

DISSENTING OPINION—Filed Aug. 3, 1923

DAVIS, Circuit Judge (dissenting):

I am unable to subscribe to the conclusions of my colleagues in the foregoing opinion. The tanker, "Llama", sailed from New York for Copenhagen, Denmark, October 24, 1915. She was, according to her chart, to stop at Kirkwall, Scotland, as required by the British Government. When about four hundred miles westward of the Orkney Islands on October 29, 1915, she was hailed by the British Cruiser,

"Virginia", and was boarded by a British prize crew or armed guard of five persons under the command of Naval officer, Lieutenant Cox. From that point the "Llama" proceeded toward Kirkwall through Westray Firth and when in the vicinity of Skea Skerries on October 31st, she struck a submerged rock and became a total loss.

The question of first importance, because the determination of this case depends upon it, is, under whose direction or authority the navigation of the "Llama" proceeded from the time she was boarded by the prize crew. The learned trial judge found as a fact that she was navigated under the direction of Lieutenant Cox who selected the route through Westray Firth and directed her courses. If this is a fact, the law is clear that the United States, operating through the Bureau of War Risk Insurance, which insured the vessel against "takings at sea, arrests, restraints and detentions of all kings, princes and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war", is liable for the loss and the taking or restraint, under the authorities, was the proximate cause of the accident and consequent loss. *Mogour v. New England Marine Insurance Co.*, 16 Federal Cases 483, No. 8,961; *Muller v. Glove and Rutgers Fire Insurance Company*, 346 Fed. 759. If this be not the fact and the prize crew under Lieutenant Cox in no way interfered with the control of the ship or the selection of the route and courses, it is [fol. 355] likewise clear that the United States is not liable for the loss.

This court has concluded that the learned District Judge erred in finding the above facts. It has found that as a matter of fact the British Lieutenant did not interfere with the control of the vessel nor determine her route nor courses to Kirkwall, but that these were determined wholly by the Captain of the vessel. This conclusion is based on the testimony of Lieutenant Cox and the silence of the Captain as to the control of the vessel in the log, the consular protest and the wreck inquiry. Lieutenant Cox testified that he had nothing to do with the management of the vessel or the selection of her route or courses. The control of the vessel and the selection of the route and courses were subjects that did not properly or necessarily arise in the log, the protest or wreck inquiry. It was admitted that Lieutenant Cox did direct the first course of the "Llama" after he boarded her, but no mention is made of that fact. It is, therefore, not strange that no mention is made of the route and other courses. The settlement in the log, protest and wreck inquiry of the questions of the control of the vessel and determination of the route and courses would throw no light on the physical cause of the accident. Printed forms are used indicating in the margin the information desired and there is nothing in those forms properly calling for the settlement of this question, or the discussion of this controversy therein. At most, the conclusion of the court that the assumption of control by Lieutenant Cox, if a fact, would necessarily appear in the log, protest and wreck inquiry, is an unnecessary inference from silence under circumstances rendering it uncertain as to whether or not the Captain should then and there have spoken.

The protest and inquiry do, however, contain this statement which indirectly throws light on the question: "The vessel was holding a course south magnetic which was considered safe by the master and by the Naval officer in charge of the prize crew." This, at least, shows joint control and is very significant when taken in connection with the purpose of boarding the vessel by the armed guard, the statement of Lieutenant Cox that he had power and authority to correct anything suggested by the Captain which did not meet his approval, that he had four armed men to assist him and that nothing was done in navigating the vessel of which he or his assistants did not know and to which they did not assent.

Further, there are two routes to Kirkwall: one through the Fair Island Channel and the other through the Westray Firth. Who selected the route through Westray Firth? This court in its opinion said: "The proofs show that the Master of the 'Llama' had taken this latter passage on the previous voyage and that the British Officer [fol. 356] on board had never taken it." This is not the whole story. The undisputed proofs show that the master, who had made many trips, was taken to Kirkwall on the previous trip by a British prize crew or armed guard through the Westray Firth which was the usual route traveled by British prize crews; that on every trip before that, the Captain had gone through Fair Island Channel and on this very trip the "Llama" was routed through the Fair Island Channel. After the Naval officer had boarded the vessel and examined the papers, he said: "I then went on the bridge and signaled my investigation to the cruiser (Virginia) who gave me orders to proceed with the ship to Kirkwall." He further said: "I told him (the captain) that the orders had come through as to the course to steer." The route through Westray Firth was about fifty miles shorter than the route through Fair Island Channel and besides it was reported that there were submarines in Fair Island Channel but none in Westray Firth. Lieutenant Cox further testified that it was his duty to take the "Llama" to Kirkwall "by the safest route" and "with all dispatch." The instructions of the British Admiralty to officers in charge of armed guards upon boarding vessels contained the following: "The master should be given the special route to be followed." The Captain and Christian P. Jensen, third mate of the "Llama," unequivocally testified that the Naval officer directed the vessel through Westray Firth and determined the courses but that the vessel had been routed through the Fair Island Channel. The learned District Judge said:

"This conclusion (the assumption of control and determination of the route by Lieutenant Cox) is arrived at not only because the weight of the evidence seems to justify it, but also because the version of the master and third officer of the "Llama" seems to me to be more probable. The war between Great Britain and Germany was then in progress and German submarines were plying the open sea beyond the Fair Island Channel. Although this was a neutral vessel carrying a non-contraband cargo to a neutral port, those in control of a German submarine would undoubtedly have evinced con-

siderable interest upon discovering a neutral vessel loaded with oil in the control of a British armed crew, and it seems highly improbable that the possibilities of this submarine peril were overlooked by the young lieutenant at the time the intended course into Kirkwall was discussed by him with the master."

So far as inferences are to be drawn from facts and indirect testimony, they are in perfect harmony with the facts found below. The conclusions really depend upon the veracity of Lieutenant Cox on the one side and the Captain and Jensen on the other. When Jensen testified, he was the Chief Officer of the "Agememnon", in the employ of the United States, and if he had any bias whatever it would have been in favor of the respondent. Therefore, his testimony is entitled to great weight and should not be set aside by inferences drawn from silence. There is no question about the fact that Lieutenant Cox was the absolute master of the vessel. He admits it and everybody on the vessel knew it. He testified that he did not exercise his mastery over the vessel, but it seems to me that, [fol. 357] notwithstanding his denials, his own statements, taken in connection with the positive testimony of others, together with the circumstances, unmistakably show that he did, and that the conclusions of the learned District Judge were in accordance with the truth and should be affirmed.

[File endorsement omitted.]

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[fol. 358] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Appeal from the District Court of the United States for the District of New Jersey

JUDGMENT—Filed July 9, 1923

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby reversed, and the cause remanded to the said Court with direction to dismiss the libel. The libellant to bear the costs in this Court and in the Court below.

Philadelphia, July 6, 1923.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 359] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of United States of America, respondent-Appellant, vs. Standard Oil Company of New Jersey, Owner, etc., Steamship "Llama", Libellant-Appellee, No. 2944, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 30th day of August in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of United States Circuit Court of Appeals, Third Circuit.)

[fol. 360] WRIT OF CERTIORARI AND RETURN—Filed Nov. 24, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which The United States of America is appellant, and Standard Oil Company of New Jersey is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of New Jersey, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, [fol. 361] do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 362] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

It is hereby stipulated, consented and agreed that the certified transcript of record now on file in the office of the Clerk of the Supreme Court of the United States in the above entitled action shall be taken as the return of the Clerk of the United States Circuit Court of Appeals for the Third Circuit to the writ of certiorari granted and issued herein by the said Supreme Court of the United States on the 26th day of October, 1923.

Dated October —, 1923.

James M. Beck, Solicitor General, Proctor for Appellant.  
Kirlin, Woollsey, Campbell, Hickox & Keating, Proctors  
for Appellee.

[File endorsement omitted.]

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[fol. 363] IN UNITED STATES CIRCUIT COURT OF APPEALS

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Stipulation of Counsel for Return to Writ of Certiorari in the case of United States of America, Appellant, vs. Standard Oil Co. of New Jersey, Appellee, No. 2944, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 23rd day of November, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of United States Circuit Court of Appeals, Third Circuit.)

[File endorsement omitted.]



SUPREME COURT OF THE UNITED STATES.

STANDARD OIL COMPANY OF NEW  
JERSEY,  
Petitioner (Libelant below),  
  
*against*

UNITED STATES OF AMERICA,  
Respondent (Respondent below).

October Term,  
1923  
No. —

SIR:

PLEASE TAKE NOTICE that the annexed petition for a Writ of Certiorari to the United States Circuit Court of Appeals, for the Third Circuit, will be submitted to the Supreme Court of the United States on the opening of court on the 1st day of October, 1923, or as soon thereafter as counsel can be heard.

Dated, New York, September 13, 1923.

JOHN M. WOOLSEY,  
CHARLES T. COWENHOVEN,  
Proctors for Petitioner.

To

WALTER G. WINNE, Esq.,  
United States Attorney,  
Proctor for Respondent.



## SUPREME COURT OF THE UNITED STATES.

STANDARD OIL COMPANY OF NEW  
JERSEY,

Petitioner (Libelant below),

*against*

UNITED STATES OF AMERICA,  
Respondent (Respondent below).

October Term,

1923

No. —

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF AP-  
PEALS FOR THE THIRD CIRCUIT.

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE  
JUSTICES OF THE SUPREME COURT OF THE UNITED  
STATES:

The Petition of the Standard Oil Company of New Jersey, a New Jersey corporation, as owner of the steamship *Llama*, alleges and respectfully shows to this Honorable Court, as follows:

STATEMENT.

*The Decision Below.*

1. The decision which the Petitioner seeks to review was rendered on the 6th day of July, 1923, by the Circuit Court of Appeals for the Third Circuit, in reversing a

final decree of the United States District Court for the District of New Jersey in Admiralty, which had been given in favor of the Petitioner against the United States of America in the sum of \$220,105.73.

The case was heard in the District Court by Judge Lynch.

The opinion of the Circuit Court of Appeals was rendered by Buffington, Circuit Judge, with whom McKeehan, District Judge, concurred. Davis, Circuit Judge, filed a dissenting opinion.

Of the four Judges who have heard the case, two have found for the Petitioner and two have found for the respondent.

### *The Pleadings.*

2. The libel herein was filed by the Standard Oil Company of New Jersey against the United States, under the Act of Congress of September 2, 1914, entitled "*An Act to Authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department*".

The libel stated two causes of action based upon two separate policies of War Risk insurance issued by the War Risk Bureau of the Treasury Department on October 8, and October 16, 1915, respectively, to the Petitioner on the hull and freight of steamship *Llama*, on a voyage from New York to Copenhagen, via Kirkwall. The steamer became a total loss in the course of the voyage insured against while being taken into Kirkwall by a British Prize Crew placed on board by a British Cruiser.

The perils insured against were alike in both policies. The paragraph enumerating them reads (Italics ours) :

“Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are men-of-war, letters of marque and countermarque, surprisals, *takings at sea, arrests, restraints and detainments of all kings, princes and peoples of what nation, condition or quality, soever, and all consequences of hostilities or war-like operations*, whether before or after declarations of war”.

#### *The Questions Involved.*

3. The issue involved in this case is whether the United States, as war risk underwriter, or the Petitioner as *owner*, should bear the loss of the American Tanker *Llama* sunk on October 31, 1915, in the vicinity of the Skerries off the coast of Scotland when she struck a submerged rock while being taken into Kirkwall for examination and possible prize proceedings by a British prize crew.

The *Llama* had been stopped by a British cruiser two days previously, which placed on board a British prize officer and four armed men with instructions to the Prize Officer to “*proceed to Kirkwall, keeping to the northward of Scule Skerries and North Rona*” and “*not to pass between the islands between the hours of darkness.*”

The Circuit Court of Appeals found that the loss resulted from “following a course in which both the Captain and the British Officer concurred”; that “the stranding was the dominant causal factor of the loss”; and that

"the stranding, if the contemporaneous evidence of the loss be accepted, resulted from the conjoint but mistaken navigation of the Captain and the British Officer."

It is of great commercial importance to the public, shippers, underwriters and steamship owners, to have definitely determined whether the stoppage by a belligerent of neutral vessels bound for a neutral port, carrying non-contraband, and the placing on board of such vessels armed Prize Crews for the purpose of taking the vessels into a belligerent port for examination and possible prize proceedings, makes the voyage into that belligerent port the risk and adventure of the belligerent and hence a war risk, or the risk and adventure of the owner and hence a marine risk.

### *The Facts.*

4. The tanker *Llama* sailed from New York on October 24, 1915, bound for Copenhagen, via Kirkwall. When about 400 miles west of the Orkney Islands, she was stopped by the British cruiser *Virginia* and boarded by a British Prize Crew consisting of a Naval Lieutenant and four armed men. The Prize Officer examined the ship's papers and manifest, which showed the ship was bound for Copenhagen via Kirkwall. He thereupon signalled the result of his investigation to the cruiser, who gave him orders to proceed with the ship to Kirkwall. *Cox*, p. 102.

The cruiser *Virginia* specifically directed Cox, the Prize Officer, to "*proceed to Kirkwall, keeping to the northward of Scule Skerries and North Rona*" and added, "*You are not to pass between the islands during the hours of darkness.*" After receiving these orders from

the cruiser, Cox testified that he turned to the captain, who was in the chart house and "*told him that orders had come through as to the course to steer*".

Cox stationed his armed men at convenient places about the ship to see that his orders were carried out. He had an armed man on the bridge at all times.

It will be seen therefore from the undisputed facts, that the Prize Officer, by order of the cruiser, compelled the captain to proceed to Kirkwall by a specific course and forbade him to pass through the islands during the night. The control of the voyage at the very outset was thus taken out of the hands of the master of the *Llama*.

In practically an identical case in which the Circuit Court of Appeals for the Second Circuit reached an opposite result from the Court below, Hough, C. J., describing a similar situation in *Muller vs. Insurance Company*, C. C. A. 2nd Circuit, 246 Fed. 759, 763, said:

"That the *Canadia* and her cargo was seized, arrested and detained within the meaning of the policy we think too plain to require more than mention."

It is also undisputed that Cox checked over the course laid out after leaving the cruiser "*to see that it complied with my orders from my Captain.*" Cox, p. 103.

The Prize Officer admitted that it was his duty to take the *Llama* to Kirkwall "*by the safest route*" and "*with all dispatch*", and that his orders from the British Government were to the effect that "*the master should be given the special route to be followed*", but not to interfere with the details of navigation unless necessary.

Cox also admitted that he realized that the *Llama* might be the subject of Prize Court proceedings, and that he was representing the interests of the British Government at least to the extent "*that I am to see that she (the Llama) gets to Kirkwall*". Cox, p. 118.

In accordance with the cruiser's order to the Prize Officer Cox, "*not to pass through the islands during the hours of darkness*", which order Cox communicated to the Master, the *Llama* lay off the entrance to Westray Firth during the night of October 30th. On the next morning, while the *Llama* was proceeding through West-ray Firth, she struck a submerged reef and stranded and became a total loss.

The prevailing opinion of the Circuit Court of Appeals found that the stranding and loss resulted from following a course in which both the captain and British Officer concurred and considered safe.

The Circuit Court of Appeals said:

"The stranding was the dominant causal factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint but mistaken navigation of the Captain and the British Officer."

*The Opinion of the District Court.*

5. All the testimony in the case was taken by deposition.

The only important conflict in the evidence was whether the final course through Westray Firth was taken

by the direction of the British Prize Officer alone, or was selected jointly by the British Prize Officer and the master of the *Llama*.

It is submitted that the master's concurrence in the course cannot be material if the vessel was under "*seizure, restraint and detention*" and the Prize Officer was in charge of the vessel.

It is a question of control of the vessel and not who was performing the duties imposed by the person having control. The Prize Officer necessarily made use of the ship's crew. Upon the seizure the master, engineers and crew became Cox's agents.

The District Court found that the final course through the Westray Firth was selected solely by the British Naval Officer.

The Circuit Court of Appeals reversed this finding and found that the course was *jointly* selected by the British Prize Officer and the master of the *Llama*.

The District Court held that there had been a loss by "taking at sea, arrest, restraint and consequence of hostilities within the meaning of the policy". Judge Lynch thus stated his conclusion, p. 166:

"There was no time when the ship's master was left to navigate the ship in his own way; she was lost while he was doing what he had to do."

"The *Llama* was all the time in the grip of the captor and of its armed representative, whose control never ceased but efficiently caused the loss. After the seizure, the adventure of taking the ship

into Kirkwall was that of the British Naval authorities and the risk and responsibility of it was theirs."

*Opinion of the Circuit Court of Appeals.*

6. The majority opinion of the Circuit Court of Appeals took the view that the loss of the ship could not be considered a war risk because although the master and crew of the steamer were under the Prize Officer's orders, the Prize Officer was not personally navigating the ship through the Westray Firth at the time of the stranding although he had examined and approved the course which put the ship on the rocks and considered it safe.

As Judge Davis pointed out in his dissenting opinion:

"There is no question about the fact that Lieutenant Cox was the absolute master of the vessel. He admits it and everybody on the vessel knew it."

It seems a little difficult to understand how the voyage, after the seizure by the Prize Crew, became any less the adventure of a belligerent Government because Cox and the master made a joint mistake as to a proper course.

The real test as to responsibility in the last analysis would seem to be who was the supreme master of the vessel.

Either the Prize Officer was aboard the *Llama* with his four armed men as a war measure adopted by the British Government to take the vessel into Kirkwall, at all costs, or he and his four armed men were on board



the *Llama* as passengers merely for the pleasure of the ride.

The following undisputed facts testified to by Prize Officer Cox when called as a witness for the United States, show conclusively what his status was on board the *Llama*.

A. On October 29, 1915, the *Llama* was stopped by the British Cruiser *Virginia*, about four hundred miles west of the Orkney Islands. *Cox*, p. 101.

B. Prize Officer Cox with four armed men went aboard the *Llama*, examined the ship's papers and manifest and signalled the result of the investigation to the cruiser. *Cox*, p. 102.

C. The British Prize Officer thereupon received the following instructions, *Cox*, p. 102 (*Italics ours*):

Q. Were any directions given *you* then as to any course or where you were to proceed to?

A. It was sent by semaphore.

Q. Did you read the semaphore yourself?

A. I personally read the semaphore myself.

Q. Tell us what the message was as near as you recall it.

A. As near as I recall it, it was '*Proceed to Kirkwall, keeping to the northward of Scule Skerries and North Rona*'. I think these two places were the other way around if I recall it to mind. '*You are not to pass between the islands between the hours of darkness.*'

Q. Now after the messages had been passed between the *Virginia* and yourself, what next followed?

A. I turned to the captain who was on the bridge and we went to the chart house as near as I can remember *and I told him orders had come through as to the course to steer.*

D. Prize Officer Cox then examined the ship's course "to see that it complied with my orders from my Captain". *Cox*, p. 103.

E. Prize Officer Cox was on the bridge with an armed man at the time the course through Westray Firth was set and the vessel was lost.

F. Prize Officer Cox admitted, and the Circuit Court below found, that he helped select, approved and considered safe the final course through the Westray Firth.

G. Prize Officer Cox realized that the *Llama* might be the subject of prize court proceedings and that he was representing the interests of his own Government, at least to the extent "*that I am to see that she goes to Kirkwall*". *Cox*, p. 118.

H. Cox admitted that it was his duty to see that the *Llama* proceeded "by the safest route" with respect to danger by submarines and at the same time place the vessel at Kirkwall "with all dispatch". *Cox*, pp. 118, 119.

In performing his admitted duty of "seeing that the ship gets to Kirkwall", it was, of course, impossible for Cox personally to run the engines, steer the ship, keep the watches, cook the meals for the crew and for himself,

and personally perform the other duties necessary to take the ship into Kirkwall. But the fact remains that the Prize Officer's orders, whether they took the form of a positive or negative direction or an acquiescence in some act that the master, or engineer or other member of the crew was performing, were supreme and were recognized as such.

As Judge Davis pointed out in his dissenting opinion "*Lieutenant Cox was the absolute master of the vessel*".

The Circuit Court of Appeals thought that because the final course through the Westray Firth was the result of the joint mistaken judgment of the Prize Officer and the master, and that the Prize Officer was not personally navigating the vessel at the time of the stranding, that the fact prevented the loss from being a war risk.

The majority opinion of the Circuit Court of Appeals stated its conclusion as follows:

"The view we have taken of the situation, namely: that the libellant has not satisfied us that the *Llama* was being navigated by the British Officer when she stranded, renders it needless to refer to the many authorities cited, all of which have had our careful examination."

It seems to us, with all respect, that the Court below completely missed the point.

The determining factor cannot be whether Cox was personally conducting the navigation. The true test is who was in control of the vessel. If Cox chose to use the owner's master and engineer for his own purposes, the responsibility still remained his.

What happened here was exactly what happened in *Muller vs. Insurance Company*, C. C. A. 246 Fed. 759. In that case the British Naval Officer and the master of the *Canadia*, which was similarly being taken into Kirkwall, "consulted" as to a course and made a joint miscalculation of about 12 miles, with the result that the vessel ran ashore and was a total loss.

The loss was held to be a war risk.

It is, of course, obvious that the hazard of a marine underwriter on a vessel in the supreme charge of an experienced master becomes a very different risk after a belligerent places over that master, as a war measure, a young naval lieutenant, twenty-two years old, with authority and power to dictate with respect to the movement of the vessel for the purpose of taking the vessel into a belligerent port.

#### 5. *Reasons why the writ should be granted.*

A. The decision of the Circuit Court of Appeals below is in direct conflict with the decision of the Circuit Court of Appeals for the Second Circuit in *Muller vs. Insurance Company*, 246 Fed. 759.

The decision is also in direct conflict with the decisions of the leading English cases. *Andersen vs. Marten*, (1908) Appeal Cases 334, and cases cited therein.

B. The question of what constitutes a war risk as opposed to a marine risk in marine insurance is one of great commercial importance. It has been considered in one form or another in at least six cases in the British House of Lords. It has not been discussed or passed upon by this Court.

This Court has however granted a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to re-

view the case of *Queen Insurance Company of America vs. Globe & Rutgers Fire Insurance Co.*, October Term, #579. That case involves the question of whether the loss of the cargo of the Italian steamer Napoli, which was sunk by collision on July 4, 1918, while proceeding under convoy of British, Italian and American warships, should be borne by the marine underwriters or by the war risk underwriters. With these two cases before it this Court can settle finally the hitherto somewhat vague boundary between Marine and War losses in the law of Marine Insurance.

C. The practice of belligerents during the late war of stopping neutral vessels bound for neutral ports carrying non-contraband, and placing on board thereof prize crews for the purpose of taking the vessels into a belligerent port for examination and possible prize proceedings, constituted new trading conditions and risks. Until it is definitely determined whether losses occurring during such "takings" are for the account of the war risk underwriters or marine underwriters, both underwriters can be depended upon to include a charge for the risk in their premiums with the result that steamship owners and the public will have to pay twice for the same risk.

*Uniformity Important in Commercial Cases.*

D. It is important to have uniformity of decision on a commercial question such as this because on any substantial risk there will be both American and British underwriters.

The Petitioner avers that these questions are sufficient to justify the exercise by this Court of the jurisdiction

vested in it to issue a *writ of certiorari* requiring the case to be brought here for review from the Circuit Court or Appeals.

The Petitioner herewith presents a certified copy of the transcript of record of all proceedings in the District Court and the Circuit Court of Appeals herein.

WHEREFORE your Petitioner respectfully prays that a *writ of certiorari* may be issued out of this Honorable Court directed to the United States Circuit Court of Appeals for the Third Circuit, commanding such Court to certify and send to the Supreme Court for its review and determination on a day certain to be therein designated, and file a complete transcript of the record of all proceedings in said Circuit Court of Appeals in said case entitled "Standard Oil Company of New Jersey, Libelant-Appellee, against United States of America, Respondent-Appellant" pursuant to Section 240 of the Judicial Code, and that the said decree of the said Circuit Court of Appeals in said case may be reversed by this Honorable Court and that your petitioner may have such other and further relief or remedy in the premises as to this Honorable Court may seem meet and in conformity with said Code.

Your petitioner will ever pray, etc.

CLETUS KEATING,  
JOHN M. WOOLSEY,  
Counsel for Petitioner.

JOHN M. WOOLSEY,  
CHARLES T. COWENHOVEN,  
Proctors for Petitioner,  
27 William Street,  
New York City.

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK, } ss.:

JOHN M. WOOLSEY, being duly sworn, says: I am one of the Proctors for the petitioner herein. I have read the foregoing petition and know the contents thereof and the same is true to the best of my knowledge, information and belief.

JOHN M. WOOLSEY.

Sworn to before me this 13th }  
 day of September, 1923. }

WM. O. GODDARD,  
 Notary Public, Kings County,  
 Certificate filed in New York County.

I hereby certify that I have examined the foregoing petition; that in my opinion it is well founded and entitled to the favorable consideration of this Court. It is not filed for the purpose of delay.

CLETUS KEATING,  
 Of Counsel.

## SUPREME COURT OF THE UNITED STATES

STANDARD OIL COMPANY OF NEW  
JERSEY,

Petitioner,  
(Libelant below)

*against*

UNITED STATES OF AMERICA,  
Respondent,  
(Respondent below).

October Term  
1923  
No. ....

## BRIEF FOR THE PETITIONER.

The facts are summarized in the petition.

The risks undertaken in the policy are as follows:

“Takings at sea, arrest, restraint and detainments of Kings, Princes and peoples of what nation, condition or quality soever and all consequences of hostilities or warlike operations”.

The admitted facts show that there was “*a taking at sea*”, “*an arrest*”, “*a restraint*” and “*a detainment*”.

The facts further show that as a consequence of these perils, which the United States had expressly assumed, the *Llama* was taken out of the possession and control of her owner by the British Navy and destroyed while in the possession of a British Prize Crew.



## POINT ONE.

TAKING THE SHIP INTO KIRKWALL WITH A NAVAL PRIZE CREW WAS THE ENTERPRISE OF THE BRITISH GOVERNMENT; THE NAVIGATION OF THE SHIP AFTER THE "SEIZURE" AND "RESTRAINT" WAS FOR THEIR ACCOUNT AND RISK; AND THE LOSS OF THE SHIP WAS THE PROXIMATE RESULT OF THE SEIZURE AND RESTRAINT.

Parsons, C. J. in the Massachusetts case of *Richardson vs. Marine Insurance Company*, 6 Mass. 101, defined "restraint and detainment", at page 108, as follows:

"For in this instrument I know of no difference between the import of restraint and detention. They are respectively the effect of superior force, operating directly on the vessel. So long as a ship is under restraint, so long she is detained; and whenever she is detained, she is under restraint. Neither have I found a book or case, relating to insurances, in which a different construction has been given to these words."

It cannot be material that the *Llama* was bound for Kirkwall in any event, or that it might have been the intention to touch at Kirkwall en route to the *Llama's* destination (Copenhagen) since there was not any reason why the master of the *Llama* could not have exercised the discretion of deviating if he had been left in the control of the vessel.

In the case of *Magoun vs. New England Marine Ins. Co.* (1840), (1 Story 157, 3 Law Rep. 127) 16 Fed. Cas. page 483, Case No. 8961, which was a suit upon a policy of insurance against usual risks, the declaration alleged

a total loss by arrest and detainment by the authorities of the Republic of New Granada, and also a total loss by the peril of the seas. It seems that the schooner when about to leave port was seized and taken into the possession of the local authorities, on account of a supposed violation of trade regulations. It subsequently developed at the trial that while the master was subject to penalty, the vessel was not subject to any forfeiture, and was accordingly restored to her owners' possession. Owing to her long exposure to the weather during the interim, she deteriorated and her cargo was also destroyed, whereupon the owners abandoned the vessel and freight to the underwriters, who, however, declined to accept the abandonment.

After discussing the question of proximate cause of the loss, Mr. Justice Story stated at p. 486, as follows (Italics ours):

"All the consequences naturally flowing from the peril insured against, or incident thereto, are properly attributable to the peril itself. *If there be a capture, and before the vessel is delivered from that peril, she is afterwards lost by fire, or accident or negligence of the captors, I take it to be clear that the whole loss is properly attributable to the capture.* It would be an over-refinement and metaphysical subtlety to hold otherwise; and would shake the confidence of the commercial world in the supposed indemnity held out by policies against the common perils. The decision of the Supreme Court of the United States in *Peters vs. Warren Ins. Co.* (at the last term), 14 Pet. (39 U. S.) 99, is directly in point; and in my judgment fully settles, that *the restraint and de-*

*tainment under the seizure are to be treated as the proximate cause of the loss in the sense of the rule. The vessel was never delivered from that peril, until she was virtually destroyed and incapable to perform the voyage."*

In *Muller vs. Insurance Company*, 246 Fed. 759, the *Canada*, was bound to Kirkwall, by way of the route northward of the Orkneys and Shetlands, when she was stopped by the British cruiser *Hilary*, which sent an armed party on board and ordered the steamer to proceed by the passage between the *Orkneys* and *Shetlands*. The passage was made at night. A course was taken which should have carried the vessel clear of Fair Island by about 12 miles. This course was adopted "after consultation" between the British Naval Officers from the *Hilary* and the master of the *Canada*; and the course was similarly changed, but as the event proved, the change of course was premature and the *Canada* grounded and became a total loss.

These facts are almost exactly similar to the established facts in the present case.

Suit was brought on policies of insurance protecting against war risk only, the perils insured against being substantially the same as those in the policies in question in the present case.

The Circuit Court of Appeals (2nd Circuit) affirming the decision of the U. S. District Court (S. D. N. Y.) held that the loss was due to war risk covered by the policies, and rejected the contention as to stranding being the proximate cause.

Circuit Judge Hough stated:

“Thus we find no intervening cause, breaking the causal connection between the control assumed by the *Hilary* boarding party and the loss of the ship. There was no time when the shipmaster was left to navigate his own ship in his own way; she was lost while he was doing what he had to do.”

In *Andersen vs. Marten*, (1908) Appeal Cases 334, suit was brought upon a policy insuring the steamship *Romulus* against loss by perils of the seas, which contained the following clause: “Warranted free from capture, seizure and detention, and the consequences of hostilities”.

The *Romulus*, a German vessel sailed, during the currency of this policy, for a Russian port with a cargo of coal which had been proclaimed contraband of war. In order to avoid Japanese cruisers the *Romulus* took a circuitous course to the north and was so injured by ice that the master made for Hakodate, a Japanese port, for refuge. Some 30 or 40 miles from that port the *Romulus* was stopped by a Japanese cruiser, and was boarded by a Japanese officer and an armed guard. The Japanese officer ordered the master of the *Romulus* to proceed to Hoskosuka, but the vessel made much water, and altering her course went aground, and ultimately she became a total loss.

The plaintiff (appellant) claimed and it was argued that the proximate cause of the loss was a peril of the sea, and that there was not any relation back to the date of the seizure; it being contended that the *Romulus* was a neutral ship and there was not any property in the vessel until condemnation, although it was admitted that the captors had rights *in rem*.

It was argued on behalf of the defending underwriter, on the other hand, that the loss was due to "capture, seizure or consequences of hostilities" despite the immediately promoting cause, which related back to the date of seizure; and the following cases in support of this doctrine of relation back were cited: *Goss vs. Withers* (1758) 2 Burr, 683; *Hamilton vs. Mendes* (1761) 2 Burr. 1198, 1211; *Dean vs. Hornby* (1854) 3 E. & B. 180; *Cory vs. Burr* (1883) 8 A. C. 393, 398; *Ruys vs. Royal Exchange Assurance Corporation* (1897) 2 Q. B. 135.

The House of Lords held that there was a total loss within the exceptions of the policy when the vessel was stopped by the Japanese cruiser, and that the underwriters (on marine risk) were not liable, although the final destruction of the vessel was due to a peril of the seas.

The Lord Chancellor (Lord Loreburn) said at page 338:

"The real question is whether there was a total loss by capture, seizure or detention, or the consequences of hostilities. I think there was in this case a total loss by capture on February 26th to say nothing of the other words, namely seizure, and so forth. That was the day on which the *Romulus* was seized lawfully, as appears by the subsequent condemnation. There was on that day a total loss which, as things were then seen, might afterwards be reduced if in the end the vessel was released."

Lord Halsbury agreed that there was a total loss from the time the boarding party took possession of the *Romulus*, and he commented on the case of *Goss vs. Withers*, (2 Burr. 683) at page 340, as follows, (*Italics ours*):

“This very question arose just 150 years ago in *Goss vs. Withers*, and was argued before Lord Mansfield, and he observed that a large field of argument had been entered into, and it would be necessary to consider the laws of nations, our own laws and Acts of Parliament, and also the laws and customs of merchants which make a part of our laws. After taking time to consider, the learned judge, delivering the judgment of the whole Court on November 23, 1758, then decided what would be enough to decide this case. After going through the whole law and discussing the question of how far and to what extent the seizure of the vessel affected the change in property, he said: ‘*But whatever rule ought to be followed in favor of the owner against a recaptor or vendee it can in no way affect the case of an insurance between the insurer and insured. \* \* \* The ship is lost by the capture though she be never condemned at all nor carried into any port or fleet of the enemy, and the insurer must pay the value.*’ If after condemnation the owner recovers or retakes her the insurer can be in no other condition than if she had been recovered or retaken before condemnation. The reason is plain from the nature of the contract; *the insurer runs the risk of the insured and undertakes to indemnify.* He must therefore bear the loss actually sustained.”

It is to be emphasized that the rule of relation back and right of abandonment as laid down by Lord Mansfield in the earlier cause of *Goss v. Withers* (1758), 2 Burr 683, and quoted with approval by Lord Halsbury as above, is equally applicable whether or not condemnation should follow the seizure. In other words, as be-

tween insurer and insured, the loss arises unconditionally under the policy at the moment of seizure.

Although the case of *Cory v. Burr* (1883), 8 A. C. 393, *supra*, involved circumstances which distinguish it from the present case, and the policy there contained a *warranty* "free from capture and seizure and the consequences of any attempts thereat", the decision reached applies inversely and the expressions of Lord Blackburn, in his opinion, are pertinent, in clearly stating that the loss would have been attributable to the seizure but for the exception. He said at p. 398 (*Italics ours*):

"The policy here is in the ordinary Lombard Street form, which has been in use for more than a century, and contains the ordinary enumeration of the perils against the loss from which the underwriters undertake to indemnify the assured. Many of these, as for instance men-of-war, enemies, pirates, rovers, and I may add barratry of the master and mariners, do not in themselves necessarily occasion any loss; but when by one of those the subject assured is taken out of the control of the owners, there is a total loss by that peril, subject to be reduced if by subsequent events the assured either do get, or but for their own fault might get their property back; *Dean v. Hornby*, 3 E. & B. 180. *There are other perils such as takings at sea, arrests, restraints and detainments of princes, which from their nature involve such a taking of the subject insured out of the control of the owners.* That being the case, supposing there had been no warranty at all, was there a loss here which would be one for which the under-

writers would be liable? Upon the facts stated I cannot doubt it."

The case of *Ruys vs. Royal Exchange Assurance Corporation* (1897), 2 Q. B. 135, was one in which suit was brought under a policy of insurance against war risks. The vessel had been captured by an Italian cruiser while carrying a cargo of ammunitions to Abyssinia, which was at war with Italy. A few days after the capture the plaintiffs, owners of the vessel, gave notice of abandonment. Although the vessel was later declared lawful prize, the war being at an end, she was ordered to be restored to her owners, which was done. The question then arose as to the effect of such restoration on the pending suit under the policy, and the Court held that the owners were entitled to recover as for a total loss. That case also supports the doctrine of relation back to the seizure, and the right to abandon at that moment, despite the outcome of seizure in respect of ultimate title to the vessel.

In *Leyland Shipping Co. Ltd. vs. Norwich Union Fire Ins. Co. Ltd.* (1918), A. C. 350, where the steamship *Ikaria* was insured against perils of the seas with a warranty against consequences of hostilities, a suit arose by reason of the loss of the *Ikaria* after having been torpedoed by a German submarine. The *Ikaria* was placed alongside a dock in Havre, and a gale having sprung up, she was removed inside the outer breakwater. She later sank. The question then arose as to what was the proximate cause of her loss, whether it was the original torpedoing of the vessel, or the gale. The Court held that the real cause was the torpedoing.



Lord Shaw of Dunfermline said, in discussing the proximate cause of the loss, at p. 371:

“The vessel, in short, is all the time in the grip of the casualty. The true efficient cause never loses its hold.”

Similarly, in the present case, the *Llama* was all the time in the grip of the captor, and of its armed representatives, whose control never ceased, but efficiently caused the loss.

After the seizure, the adventure of taking the ship into Kirkwall was that of the British Naval authorities, and the risk and responsibility of it was theirs. The result was as in the case of *Andersen vs. Marten*, (1908) A. C. 334, that the shipowners lost their ship by arrest and seizure and the captors lost their capture by stranding.

It is submitted that the loss of the *Llama* having occurred while in the possession and control of the British Government, whose act constituted “an arrest, restraint and detainment” as “a consequence of hostilities” within the meaning of the policy, the Petitioner is thereby entitled to indemnification from the respondent as for a total loss *ab initio* under the foregoing authorities.

It was contended in the Court below and the Circuit Court of Appeals found that the loss was not proximately caused by the seizure, but was the result of ordinary sea peril not covered by the policies.

We reiterate that under the principles of the law of insurance as laid down by the cases cited above, it is immaterial as between the insurer and the insured, what might have been the immediate cause of the loss. Since

the loss took place after the seizure and while the vessel was under the control of and in the possession of the British Governmental representatives, the loss was primarily the loss of the British Government, for which possibly it may be required to account to the United States as underwriter, when it has paid the amount due under the policies and becomes entitled to an underwriter's subrogation.

#### CONCLUSION.

There is presented in this case the flat question of whether the destruction of a neutral vessel, carrying non-contraband, following the stoppage of such vessel by a belligerent during a state of war and the placing on board of such vessel of an armed prize crew for the purpose of taking the vessel into a belligerent port for examination and possible prize proceedings, constitutes a loss by "*seizure, restraint and detention*" within the meaning of a war risk policy when the final destruction of the vessel took place while in possession of the prize crew, and was caused, at least in part, by the personal negligence of the prize officer in selecting and approving an unsafe course.

It is urged, therefore, that this is a proper case for the issuance of a *writ of certiorari*.

Respectfully submitted,

CLETUS KEATING,  
JOHN M. WOOLSEY,  
Counsel for Petitioner.

## CONTENTS.

	PAGE
STATEMENT OF CASE.....	1
FACTS .....	5

### FIRST POINT.

TAKING THE SHIP INTO KIRKWALL WITH A NAVAL PRIZE CREW WAS THE ENTERPRISE OF THE ENGLISH GOVERNMENT; AND NAVIGATION OF THE SHIP AFTER THE TAKING, ARREST, SEIZURE AND DETAINMENT WAS FOR THEIR RISK AND ACCOUNT; THE LOSS OF THE SHIP WAS THE PROXIMATE RESULT OF THE ARREST, SEIZURE, RESTRAINT AND DETAINMENT.....	21
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### SECOND POINT.

PETITIONER IS ENTITLED TO INTEREST ON THE AMOUNT DUE UNDER THE POLICIES FROM FEBRUARY 11, 1917 .....	39
------------------------------------------------------------------------------------------------------	----

### LAST POINT.

THE DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT SHOULD BE REVERSED, AND THE FINAL DECREE OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY, SHOULD BE REINSTATED WITH A MODIFICATION SO AS TO ALLOW THE PETITIONER THE SUM OF \$2270.34 FOR SUE AND LABOR EXPENSES INSTEAD OF \$2751.97; AND WITH THE FURTHER MODIFICATION SO AS TO PROVIDE FOR INTEREST AT THE RATE OF SIX PER CENT. FROM FEBRUARY 11, 1917, TO THE DATE OF PAYMENT, WITH COSTS .....	44
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----

## INDEX OF AUTHORITIES.

	PAGE
<i>Act of Congress of Sept. 2, 1914</i> .....	1, 39
<i>Andersen v. Marten</i> , (1908) A. C. 334.....	22, 26, 31
<i>Cory v. Burr</i> , (1883) 8 A. C. 393, 398.....	27, 29
<i>Dean v. Hornby</i> , (1854) 3 E. & B. 180.....	27, 29
<i>Goss v. Withers</i> , (1758) 2 Burr. 683.....	23, 27, 28, 29
<i>Hamilton v. Mendes</i> , (1761) 2 Burr. 1198, 1211.....	27
<i>Leyland Shipping Company, Ltd. v. Norwich Union Fire Insurance Society, Ltd.</i> , (1918) A. C. 350....	23, 30
<i>Magoun v. New England Marine Insurance Co.</i> , (1840) (1 Story 157, 3 Law Rep. 127), 16 Fed. Cases 483, Case No. 8961.....	22, 23, 38
<i>Morgan v. United States</i> , 14 Wall. 531.....	33
<i>Morgan v. United States</i> , 5 U. S. Court of Claims Reports 182 .....	33
<i>Muller v. Insurance Companies</i> , 246 Fed. 759, 8, 20, 22, 25, 38	
<i>Napoli, The</i> , ( <i>Queen Insurance Company of America v. Globe &amp; Rutgers Fire Insurance Co.</i> ), 263 U. S. 487.....	36, 38
<i>Peters v. Warren Ins. Co.</i> , 14 Pet. (39 U. S.) 99.....	24
<i>Queen Insurance Co. of America v. Globe &amp; Rut- gers Fire Insurance Co. (The Napoli)</i> , 263 U. S. 487 .....	36, 38
<i>Richardson v. Marine Insurance Company</i> , 6 Mass. 101 .....	23
<i>Ruys v. Royal Exchange Assurance Corporation</i> , (1897) 2 Q. B. 135.....	23, 27, 30
<i>Seaboard Air Line Ry. v. U. S.</i> , 261 U. S. 299.....	42

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

STANDARD OIL COMPANY OF NEW  
JERSEY, as owner, etc. of the Steam-  
ship *Llama*,

Petitioner,

*against*

THE UNITED STATES OF AMERICA.

No. 169.

ON WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS  
FOR THE THIRD CIRCUIT.

BRIEF ON BEHALF OF PETITIONER

STATEMENT OF CASE.

On May 5, 1919 the Petitioner, Standard Oil Com-  
pany of New Jersey, as owner, etc. of the Steamship  
*Llama*, filed a libel in Admiralty in the District Court  
for the District of New Jersey under the Act of Congress  
of September 2nd, 1914 entitled, "*An Act to Authorize  
the Establishment of a Bureau of War Risk Insurance in  
the Treasury Department.*"

This Act by Section 5 expressly conferred jurisdiction of the controversy on the District Court sitting in Admiralty.

The case came on to be heard in the District Court for the District of New Jersey before Judge Lynch, who entered a Final Decree in favor of the Petitioner against the United States in the sum of \$220,105.73. Pp. 111-113.

The opinion of Judge Lynch will be found at pp. 106-110 of the Record.

From this final decree the United States filed an appeal to the United States Circuit Court of Appeals for the Third Circuit.

On July 6, 1923 a majority of that Court, (Buffington, C. J., and McKeehan, D. J.), rendered an opinion remanding the case to the District Court with directions to vacate the decree and dismiss the libel. Pp. 178-183. Davis, C. J. filed a dissenting opinion. Pp. 183-186.

Of the four judges who have heard the case, two have been for the Petitioner and two for the United States.

The libel stated two causes of action based upon two separate policies of war risk insurance issued by the War Risk Bureau of the Treasury Department on October 8, and October 16, 1915, respectively, to the Petitioner, on the hull and freight of the Steamship *Llama* covering a voyage from New York to Copenhagen via Kirkwall.

The steamer became a total loss in the course of the voyage insured against while being taken into Kirkwall

by a British Prize crew placed on board by a British cruiser.

The perils insured against were alike in both policies.

The clause enumerating them, reads, pp. 122, 125, (*italics ours*):

"Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are the men-of-war, letters of marque and countermarque, surprisals, *takings at sea, arrests, restraints and detainments of all kings, princes, and peoples of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations*, whether before or after declarations of war."

The policies contained the usual sue and labor clause. Pp. 122, 125.

The District Court held that there had been a loss by "*taking at sea, arrest, restraint and consequences of hostilities within the meaning of the policy.*"

Judge Lynch thus stated his conclusion, p. 110:

"There was no time when the shipmaster was left to navigate the ship in his own way; she was lost while he was doing what he had to do.

"The *Llama* was all the time in the grip of the captor and of its armed representatives, whose control never ceased, but efficiently caused the loss. After the seizure the adventure of taking the ship into Kirkwall was that of British naval authorities, and the risk and responsibility of it was theirs."

The District Court found that the final course through the Westray Firth when the ship went on a rock was selected solely by the British Naval officer. P. 108.

Davis, C. J., in his dissenting opinion in the Circuit Court of Appeals agreed with this conclusion. Pp. 185-186.

The majority opinion of the Circuit Court of Appeals took the view that the loss of the ship could not be considered a war risk because although the master and the crew of the steamer were under the Prize Officer's orders, the Prize Officer was not personally navigating the ship through the Westray Firth at the time of the stranding, although he had approved the course, and he and the master had considered it safe. P. 182.

The Record shows that the Prize Officer, Cox, five minutes before the stranding had actually "suggested" that the captain change the course, which the captain did. *Cox*, p. 70.

The Circuit Court of Appeals in summarizing its decision said, p. 182:

"The stranding was the dominate causal factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint, but mistaken, navigation of the captain and the British officer."

All the testimony in the case was taken by deposition.

The important conflict in the evidence on which the District Court found one way, and the majority of the Circuit Court of Appeals the other, was whether the final course through the Westray Firth when the ship went



on the rocks was selected solely by the British prize officer, or was selected jointly by the British prize officer and the master of the *Llama*.

Even if the view of the Circuit Court of Appeals is adopted, this does not decide the vital issue as to which of the two men was *in control* of the ship at the time and legally chargeable with responsibility for the disaster, and whether there was a "*taking at sea, arrest, restraint and detainment*" within the meaning of the policy.

The material testimony with respect to the occurrences involved in this controversy is contained in the depositions of the following witnesses:

*Clinch*, former master of the *Llama*, called by the Petitioner. Pp. 37-63.

*Jensen*, former third officer of the *Llama*, called by the Petitioner, pp. 16-36, who at the time he was examined was a Naval Officer of the United States, attached to the United States Transport *Agamemnon* as Chief Officer. P. 25.

*Lieutenant Cox*, the British Naval Officer, who was engaged in taking the *Llama* into Kirkwall, called by the United States. Pp. 63-86.

#### FACTS.

The Tanker *Llama*, owned by the Petitioner, sailed from New York on October 14, 1915 bound for Copenhagen, via Kirkwall. *Clinch*, pp. 37, 38. When about 400 miles west of the Orkney Islands she was stopped by the British Cruiser *Virginia* and boarded by a British prize crew, consisting of a naval lieutenant and four armed men. *Cox*, pp. 65, 77. *Clinch*, p. 38.

The Prize Officer examined the ship's papers and manifest which showed the ship was bound for Copenhagen via Kirkwall. *Cox*, pp. 65, 79.

Cox thereupon signaled to the British Cruiser the result of his investigation which was apparently unsatisfactory, and Cox was given orders to proceed with the ship to Kirkwall. *Cox*, pp. 65, 79.

Cox stationed his armed men at convenient places about the ship to see that his orders were carried out. He had an armed man on the bridge at all times. *Cox*, pp. 66, 67, 79.

Cox describes the circumstances of his boarding of the *Llama* as follows, p. 65 (Italics ours):

“Q. Now, Lieutenant, just tell us exactly what took place when you came aboard—where you boarded, whom you saw, whom you spoke to and what was said.

A. I boarded her on the port side just below the bridge, and I was met on the deck when I boarded by an officer.

Q. Do you know which one it was?

A. I could not tell you.

Q. It is immaterial?

A. Then I was taken to the captain, who, to the best of my recollection, was on the bridge. We then went in the cabin and went over his papers; that is, the ship's papers and manifest. *I then went on the bridge and signalled my investigation to the cruiser, who gave me orders to proceed with the ship to Kirkwall.*

Q. Were any directions given you then as to any course, or where you were to proceed to?

A. It was sent by semaphore.

Q. Did you read the semaphore yourself?

A. *I personally read the semaphore myself.*

Q. Tell what was the message as near as you recollect it?..

A. As near as I recollect it, it was: '*Proceed to Kirkwall; keeping to the northward of Scule Skerry and North Rona*'. I think those two places were the other way round if I recall it to mind. '*You are not to pass between the islands during the hours of darkness.*'

. . .

Q. Now, after the message had been passed between the *Virginian* and yourself, what next followed?

A. I turned to the captain who was on the bridge and we went into the chart house, as near as I can remember; and I told him that orders had come through as to the course to steer.

Q. What was that?

A. *It was to keep northward of these two islands.*

Q. What islands?

A. *Scule Skerry and North Rona, and I asked him if he would navigate the ship, to which he replied that he would. The captain then laid off the course as near as I can remember to Noup Head; and then he gave the order to—asked me, rather, if he could proceed; so I said 'yes'; and he gave the order, 'Full speed ahead' and set the course.*

Q. Who laid off the course on the chart?

A. The captain.

Q. Who gave the directions for setting it?

A. The captain.

Q. State whether or not you took any part whatever in the navigation of the ship on that course.

• • • • •

Q. Answer the question.

A. I took no part in laying the course off; *the only part I took was in looking after it afterwards to see that it complied with my orders from my captain.*

Q. And that was what?

A. *That was to pass to the northward of North Rona and Scule Skerry.* The course did that and so I never mentioned it again."

Thus the *Llama* had been placed under *arrest, seizure, restraint, and detainment* within the meaning of the risks insured against in the policies, by being first stopped by a British war-vessel, which placed on board her a British naval officer and four armed men, who took possession and control of the vessel, and compelled the captain to proceed to Kirkwall by a specific course, and forbade him to pass through the Islands during the night. The control of the voyage at the very outset was taken out of the hands of the master of the *Llama*, who was rendered subservient to the orders of the British naval lieutenant.

In practically an identical case in which the Circuit Court of Appeals for the Second Circuit reached the directly opposite result from the court below, *Hough*, C. J., describing a precisely similar situation, in *Muller v. Insurance Companies*, C. C. A. 2nd Circ., 246 Fed. 759, 762, said:

"That the *Canadia* and her cargo was seized, arrested and detained within the meaning of the policy we think too plain to require more than mention."

The testimony of Lieutenant Cox clearly shows that after he had directed the initial course laid out after leaving the cruiser he checked the course on the chart "*to see that it complied with my orders from my captain*". Cox, p. 66.

Cox further testified that the captain later approached him and asked his "*permission*" to proceed through the Westray Firth, and that he gave his "*consent*" to go through that passage. Cox, p. 73.

If Lieutenant Cox was not in supreme control of the vessel with its captain subservient to him, it is a little difficult to understand why the captain should have to ask his "*permission*" to proceed through the Westray Firth, and why Cox should give his "*consent*" to do so. This incident demonstrates very forcibly the dominion that Cox had assumed over the vessel and its captain.

At page 82 of the Record Cox testified as follows with respect to how the ship was navigated from the time he boarded her until the vessel stranded (Italics ours):

"Q. Were you present with the captain in the chart room when he was laying down these courses?

A. Not the first course.

Q. That is the course to the north of Scule Skerry?

A. Yes.

Q. You told him about that course?

A. I told him what we had got to do.

Q. And he showed you the course afterwards?

A. Yes, I went out to see our ship in case there were any more signals coming there and he showed me the course afterwards.

Q. And you approved it?

A. Yes.

Q. So that when he was laying down that course you were with him in his chart room?

A. Sometimes I was with him and sometimes I was out on the bridge.

Q. At all times before acting upon any course which he had laid down tentatively he would tell you what he had done?

A. He had sometimes altered his course first and told me afterwards.

Q. Told you immediately afterwards?

A. Yes, within a short time afterwards.

Q. Before the course had been departed from materially?

A. Yes.

Q. It is the fact, is not it, that the captain always reported to you what he was doing until the time of the stranding?

A. Yes.

Q. Did you at any time suggest changes?

A. No, only the one time when I sighted this wash ahead.

Q. You had told him what your general instructions were?

A. I told him what the general instructions were.

Q. And he laid down these courses?

A. Yes.

Q. *Showed them to you and you approved them?*

A. *Yes.*

Q. *And then he carried them out?*

A. *Yes."*

The foregoing testimony amounts to this:

The general directions as to courses were given by Cox to the master. The master thereupon worked out the details in accordance with Cox's general instructions and submitted them to Cox for his approval which in each case was given.

In such a situation can there be any question as to who was in control of the ship?

Lieutenant Cox furthermore admitted with obvious reluctance that it was his duty to take the *Llama* to Kirkwall "*by the safest route*" and "*with all despatch*", and that his orders from the British Government were to the effect that the "*master should be given a special route to be followed, but not to interfere with the details of navigation unless necessary.*" Cox, pp. 78, 92.

Lieutenant Cox also testified that he realized that the *Llama* might be the subject of prize court proceedings, and that he was representing the interests of the British Government at least to the extent "*that I am to see that she (The Llama) gets to Kirkwall.*" Cox, p. 78.

At pages 77-79 Cox thus described his conception of his position aboard the ship:

"186 Q. Now when you boarded any vessel for the purpose of taking her in for examination you

realized, I take it, that you were boarding a vessel that might possibly after examination at Kirkwall be the subject of prize court proceedings?

A. Yes.

187 Q. And that she might possibly be condemned as good prize?

A. Yes.

188 Q. So that you realized when you boarded any such vessel that you were representing the interests of your Government, whatever they might prove to be, in that particular vessel?

A. Yes.

189. Q. I do not know the value of the *Llama*; but, assuming she was worth, say, half a million dollars, or a million dollars, you would then realize that on boarding the *Llama* you were representing the interests of your Government, whatever they might be, in a vessel of considerable value?

Mr. Staley: This is objected to; the man was boarding under naval orders.

A. To the extent that I am to see that she gets to Kirkwall.

Mr. Symmers: Yes, you understand it was part of your duty to see that she got there?

A. Yes.

190 Q. And it was part of your duty in answering the interests of your Government to see that she got there, if possible, by the safest route?

A. By the safest route, yes.

191 Q. And in view of the presence of submarines in all quarters, especially where they were not expected to be, you recognized the importance of getting every vessel that you boarded in as quickly as possible?



Mr. Staley: Is that prior to this time or subsequent to this time?

Mr. Symmers: Both prior and subsequent and at this time?

A. Yes, to get them in with all despatch.

192 Q. You did not regard yourself as merely a passenger on board this ship, did you?

A. I did as far as the navigation of the ship went.

193 Q. Oh, of course; but suppose a captain had suggested a course that did not meet with your approval, you assume yourself to have power to correct it?

A. Yes.

194 Q. That was one of the purposes of being armed, was not it; to compel the masters to do whatever you thought fit to make them do?

A. Only to a certain extent. If his course would take him to Kirkwall he could take that course, provided it was not against direct orders from the Government.

195 Q. Suppose upon being boarded he had said: 'I do not want to go into Kirkwall with you; I am going to turn back and go to where I came from,' what would you have done?

A. I should have informed the cruiser.

196 Q. And what would have been the custom of the cruiser?

A. That I cannot tell you.

197 Q. But, to the extent of your power, you had instructions to take him into Kirkwall, and to the extent of your power you would have obeyed those instructions?

A. Yes.

198 Q. And you had four or five armed men to assist you in that?

A. Yes.

199 Q. Were any of the crew or any of the officers of the *Llama* armed, as far as you had any information?

A. Not as far as I know.

200 Q. They complied with your requests or orders or direction, or whatever you choose to call them?

A. Yes.

201. Q. They gave you no opposition?

A. They gave me no opposition, no.

202 Q. You told the master you had these orders to take him into Kirkwall?

A. I said he had to proceed to Kirkwall."

In considering Cox's evidence it should be borne in mind that Captain Clinch testified that he had not intended to go through the Westray Firth passage but was planning to use the Fair Island passage to the north of the Orkneys which was longer but as safe as the Atlantic Ocean. *Clinch*, p. 39. Cox, however, insisted on the Westray passage. *Clinch*, p. 39.

The steamer proceeded on her way towards Kirkwall and in accordance with the cruiser's order to Lieutenant Cox "*not to pass through the islands during the hours of darkness*", which order Cox communicated to the master, the *Llama* lay off the entrance to the Westray Firth during the night of October 30th.

On the next morning, the *Llama* commenced her fatal trip through the Westray Firth.

Cox testified that shortly before the stranding while going through Westray Firth he went on the bridge and had a look around; that he then went into the chart room where the captain was, was shown the position of the ship by the captain and had a few words with the captain about the course he was steering. *Cox*, p. 69.

With respect to what then followed, Lieutenant Cox, at pages 69, 70, gave the following very significant testimony (*Italics ours*):

“A. And then I went out on the bridge again and saw breakers on the port bow.

Q. How much on the port bow?

A. I should say about a point and half a point.

Q. And how far distant about?

A. One to two miles, I should think.

Q. Go on.

A. *I then went into the chart room again and told him what I had seen and suggested that he had better take steps to clear it, which he immediately went out and did.”*

About five minutes thereafter the steamer struck a submerged reef and stranded and became a total loss. P. 22.

It will be observed from the testimony just quoted that Lieutenant Cox says he “*suggested*” to the captain to make the final change in the course before the vessel went on the rocks. But in view of Cox’s position aboard the ship, it can scarcely be contended that Cox’s “*suggestion*” could be regarded in any other light than an absolute order.

As Davis, C. J., pointed out in his dissenting opinion, p. 186:

"There is no question about the fact that Lieutenant Cox was the absolute master of the vessel. He admits it, and everybody on the vessel knew it."

In connection with Lieutenant Cox's testimony that he "*suggested*" that the captain change to the final course, the evidence of Jensen, the third officer, is important.

As has been already mentioned, Jensen, when examined as a witness, was a United States naval officer attached to the United States Transport *Agamemnon*. If he had any incentive to color the truth it certainly would be in favor of the United States, his employer. Such an idea, however, would hardly occur to a United States naval officer. At page 22 Jensen testified:

"Between the time of change of course and stranding I saw breakers on the port bow close aboard. The fact of seeing these breakers naturally aroused my curiosity and also made me entertain a certain amount of doubt if we would clear them or not. I notified the prize officer in person about these breakers that seemed to me to be rather close on the course we were on. I asked him his opinion about being on a safe course to pass these breakers. He assured me we were. Because of the fact that my duty kept me on the bridge all the time I had no access to the chart and presuming that the prize officer was naturally acquainted with the waters in this locality, I requested him to inform me of the name of this reef. He said he was not sure of the name."

Furthermore, Jensen very positively testified, as did the captain, that the final change of course was made by the Prize Officer and not by the captain.

The District Court found that after the seizure and at the time of the stranding the vessel was being navigated solely by the British Naval Officer or under his direction.

With this conclusion, Davis, C. J. in his dissenting opinion below expressed concurrence. P. 186.

The majority opinion of the Circuit Court of Appeals held that the final course through the Westray Firth was not selected solely by the naval lieutenant, but was the result of the conjoint but mistaken, judgment of the British Naval Officer and the Master.

Judge Buffington (p. 182) writing for the majority, stated their finding as follows:

“The stranding was the dominant causal factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint, but mistaken, navigation of the captain and the British Officer.”

This finding was undoubtedly due to the statement of Captain Clinch made before the American Consul at Dundee in his extended protest in which he stated that when the vessel stranded “the vessel was holding a course south magnetic, which was considered safe by the master and by the Naval Officer in charge of the prize crew.” P. 148.

The finding, however, wholly disregards the fact that Cox testified that he "*suggested*" the change of course to the captain and the captain immediately carried it out. Cf. *Cox's* testimony p. 70.

Whether the captain considered the course safe or not, the fact remains that the course was "*suggested*" by Cox who was in control of the vessel.

It is impossible to understand how the voyage after the seizure by the prize crew became any less the adventure of a belligerent government because the master and the prize officer made a conjoint mistake as to the safety of the course. The real test in the last analysis would seem to be who was the supreme master of the vessel.

Either the prize officer was aboard the *Llama* with his four armed men as the representative of the British Government to take the vessel into Kirkwall at all costs, as Lieutenant Cox has testified, or Lieutenant Cox and his four armed men were on board the *Llama* as passengers, merely for the pleasure of the ride.

In performing his admitted duty of "*seeing that the ship gets to Kirkwall*" "*by the safest route*" and "*with all despatch*" on a course "*keeping to the northward of Scule Skelly and North Rona*", it was of course impossible for Lieutenant Cox personally to run the engines, steer the ship, keep the watches, cook the meals for the crew and for himself and personally perform the other duties necessary to take the ship into Kirkwall. He had either to put on an entirely new crew or make use of the men he found on board.

But the fact remains that the prize officer's orders or "suggestions", whether they took the form of positive or negative direction or acquiescence in some act that the master or engineer or other member of the crew was performing, were supreme and recognized as such. They were backed by armed force.

As Davis, J., pointed out in his dissenting opinion in the Circuit Court of Appeals:

"Lieutenant Cox was the absolute master of the vessel."

The majority opinion of the Circuit Court of Appeals stated its conclusion as follows:

"The view we have taken of the situation, namely: that the libellant has not satisfied us that the *Llama* was being navigated by the British officer when she stranded, renders it needless to refer to all the authorities cited, all of which have had our careful attention."

It seems to us, with all respect, that the court below completely missed the point.

The determining factor cannot be whether Lieutenant Cox was personally conducting the details of the navigation. The true test is who was in control of the vessel from the time of the arrest, seizure and detention. If Lieutenant Cox chose either from necessity or otherwise to use the owner's master and engineers for his own purposes, the responsibility still remained his. If the owner's entire crew had been taken off and a British naval crew put aboard there could be no doubt that Cox

would be responsible for his subordinates. What possible difference can it make in principle that Cox chose to use the owner's master and crew as his subordinates?

What happened here was exactly what happened in *Muller v. Insurance Companies*, C. C. A. 246 Fed. 759.

In that case the British naval officer and the master of the *Canadia*, which was similarly being taken into Kirkwall, "consulted" as to the course and made a joint miscalculation of about twelve miles, with the result that the vessel ran ashore and was a total loss.

The loss was held to be a war risk.

It is, of course, obvious that the hazard of a marine underwriter on a vessel in charge of an experienced master becomes a very different risk after a belligerent places over that master a young naval lieutenant, twenty-two years old, with authority and power to dictate with respect to the movements of the vessel, for the purpose of taking the vessel into a belligerent port.

In fact, it must be obvious that a shipmaster, who is obliged to proceed to a certain port by a specified route and is compelled to submit for approval each change of course that the vessel makes, and who has to ask for "permission" to change a course and receives "consent", has ceased to be the master of that ship. He has become in fact the instrument of the naval lieutenant who had been placed above him with an armed force to compel obedience.

The Petitioner lost its ship when the *Llama* was "taken, arrested and detained" and Lieutenant Cox as-



sumed control thereof, and the British Government lost its prize when the ship stranded.

That this proposition is legally sound is abundantly supported by the authorities, as we will demonstrate.

### FIRST POINT.

TAKING THE SHIP INTO KIRKWALL WITH A NAVAL PRIZE CREW WAS THE ENTERPRISE OF THE ENGLISH GOVERNMENT; AND NAVIGATION OF THE SHIP AFTER THE TAKING, ARREST, SEIZURE AND DETAINMENT WAS FOR THEIR RISK AND ACCOUNT; THE LOSS OF THE SHIP WAS THE PROXIMATE RESULT OF THE ARREST, SEIZURE, RESTRAINT AND DETAINMENT.

The facts are summarized in this brief at pp. 5-17.

The risks undertaken in the policy are as follows:

“Takings at sea, arrest, restraints and detainments of all kings, princes and peoples of what nation, condition or quality soever and all consequences of hostilities or warlike operations.”

The admitted facts, it is submitted, show that there was a “taking at sea”, an “arrest”, a “restraint” and a “detainment”.

The facts further show that as a consequence of these perils which the United States had expressly assumed, the *Llama* was taken out of the possession and control of her owner by the British Navy and destroyed while in the possession of a British Prize crew by the negligence of the Prize Officer in command.

1. If this Court should agree with the conclusion of the District Court which was concurred in by Davis, C. J., in his dissenting opinion, that the final course through the Westray Firth was suggested or ordered by Lieutenant Cox, the Petitioner is plainly entitled to a decree in its favor, because the loss of the ship would be directly due to the negligence of Lieutenant Cox as agent of a belligerent government.

2. If this Court should agree with the majority of the Circuit Court of Appeals that the loss of the ship was due to the "conjoint, but mistaken, navigation of the captain and the British officer", the Petitioner is entitled to a decree in its favor because Lieutenant Cox was in supreme control of the vessel and responsible for his own acts and the acts of the master, engineers and other members of the crew whom he made his subordinates. *Muller v. The Insurance Companies*, C. C. A. 2nd Circ., 246 Fed. 759.

3. In any event, the Petitioner is entitled to a decree because, under the well settled law of both the United States and Great Britain, a seizure, restraint and detention are regarded as the proximate cause of the loss of the ship if, before being delivered from those perils, the vessel is lost for any reason and not returned to her owners. *Magoun v. New England Marine Insurance Company* (1840) (1 Story 157, 3 Law Rep. 127), 16 Fed. Cases 483, Fed. Case No. 8961; *Muller v. The Insurance Companies*, C. C. A. 2nd Circ., 246 Fed. 759; *Andersen v.*

*Marten*, (1908) App. Cases 334; *Goss v. Withers*, 2 Burr 683; *Ruys v. Royal Exchange Assurance Corporation*, (1897) 2 Q. B. 135; *Leyland Shipping Company, Ltd. v. Norwich Union Fire Insurance Society, Ltd.*, (1918) A. C. 350.

Parsons, C. J., in the Massachusetts case of *Richardson v. Marine Insurance Company*, 6 Mass. 101, defined "restraint and detainment", at p. 108, as follows:

"For in this instrument I know of no difference between the import of restraint and detention. They are respectively the effect of superior force, operating directly on the vessel. So long as a ship is under restraint, so long she is detained; and whenever she is detained, she is under restraint. Neither have I found a book or case, relating to insurances, in which a different construction has been given to these words."

It cannot be material that the *Llama* was intending to call at Kirkwall in any event. The expediency of calling at Kirkwall had been forced on the petitioner by the British Government. *Hand*, p. 102.

In the case of *Magoun v. New England Marine Ins. Co.* (1840) (1 Story 157, 3 Law Rep. 127), 16 Fed. Cas. page 483, Case No. 8961, which was a suit upon a policy of insurance against usual risks, the declaration alleged a total loss by arrest and detainment by the authorities of the Republic of New Granada, and also a total loss by perils of the seas. It seems that the schooner, when about to leave port, was seized and taken into the possession of the local authorities, on account of a supposed violation of trade regulations. It subsequently developed

at the trial that while the master was subject to penalty, the vessel was not subject to any forfeiture, and was accordingly restored to her owners' possession. Owing to her long exposure to the weather during the interim, she deteriorated and her cargo also was destroyed, whereupon the owners abandoned the vessel and freight to the underwriters, who, however, declined to accept the abandonment.

After discussing the question of proximate cause of the loss, Mr. Justice Story stated, at p. 486, as follows (*italics ours*):

"All the consequences naturally flowing from the peril insured against, or incident thereto, are properly attributable to the peril itself. *If there be a capture, and before the vessel is delivered from that peril, she is afterwards lost by fire, or accident or negligence of the captors, I take it to be clear that the whole loss is properly attributable to the capture.* It would be an over-refinement and metaphysical subtlety to hold otherwise; and would shake the confidence of the commercial world in the supposed indemnity held out by policies against the common perils. The decision of the Supreme Court of the United States in *Peters vs. Warren Ins. Co.* (at the last term), 14 Pet. (39 U. S.) 99, is directly in point; and in my judgment fully settles, that the *restraint and detainment under the seizure are to be treated as the proximate cause of the loss in the sense of the rule. The vessel was never delivered from that peril, until she was virtually destroyed and incapable to perform the voyage.*"

In *Muller v. Insurance Companies*, 246 Fed. 759, the *Canadia* was bound to Kirkwall by way of the route northward of the Orkneys and Shetlands, when she was stopped by the British cruiser *Hilary*, which sent an armed party on board and ordered the steamer to proceed by the passage between the *Orkneys* and *Shetlands*. The passage was made at night. A course was taken which should have carried the vessel clear of Fair Island by about 12 miles. This course was adopted "after consultation" between the British Naval Officer from the *Hilary* and the master of the *Canadia*; and the course was similarly changed, but, as the event proved, the change of course was premature and the *Canadia* grounded and became a total loss.

These facts are almost exactly similar to the established facts in the present case.

Suit was brought on policies of insurance protecting against war risk only, the perils insured against being substantially the same as those in the policies in question in the present case.

The Circuit Court of Appeals (2nd Circuit), affirming the decision of the U. S. District Court (S. D. N. Y.), held that the loss was due to war risk covered by the policies, and rejected the contention as to stranding being the proximate cause.

Circuit Judge Hough stated:

"Thus we find no intervening cause, breaking the causal connection between the control assumed by the *Hilary* boarding party and the loss of the ship. There was no time when the shipmaster

was left to navigate his own ship in his own way; she was lost while he was doing what he had to do."

In *Andersen v. Marten*, (1908) Appeal Cases 334, suit was brought upon a policy insuring the steamship *Romulus* against loss by perils of the seas, which contained the following clause: "Warranted free from capture, seizure and detention, and the consequences of hostilities."

The *Romulus*, a German vessel, sailed during the currency of this policy, for a Russian port with a cargo of coal which had been proclaimed contraband of war. In order to avoid Japanese cruisers the *Romulus* took a circuitous course to the north and was so injured by ice that the master made for Hakodate, a Japanese port, for refuge. Some 30 or 40 miles from that port the *Romulus* was stopped by a Japanese cruiser, and was boarded by a Japanese officer and an armed guard. The Japanese officer ordered the master of the *Romulus* to proceed to Hoskosuka, but the vessel made much water, and altering her course went aground, and ultimately she became a total loss.

The plaintiff (appellant) claimed and it was argued that the proximate cause of the loss was a peril of the sea, and that there was not any relation back to the date of the seizure; it being contended that the *Romulus* was a neutral ship and there was not any property in the vessel until condemnation, although it was admitted that the captors had rights *in rem*.

It was argued on behalf of the defending underwriter, on the other hand, that the loss was due to "capture, seizure or consequences of hostilities" despite the immediately promoting cause, which related back to the date of seizure; and the following cases in support of this doctrine of relation back were cited: *Goss v. Withers*, (1758) 2 Burr, 683; *Hamilton v. Mendes*, (1761) 2 Burr, 1198, 1211; *Dean v. Hornby*, (1854) 3 E. & B. 180; *Cory v. Burr*, (1883) 8 A. C. 393, 398; *Ruys v. Royal Exchange Assurance Corporation*, (1897) 2 Q. B. 135.

The House of Lords held that there was a total loss within the exceptions of the policy when the vessel was stopped by the Japanese cruiser, and that the underwriters (on marine risk) were not liable, although the final destruction of the vessel was due to a peril of the seas.

The Lord Chancellor (Lord Loreburn) said at page 338:

"The real question is whether there was a total loss by capture, seizure or detention, or the consequences of hostilities. I think there was in this case a total loss by capture on February 26th to say nothing of the other words, namely seizure, and so forth. That was the day on which the *Romulus* was seized lawfully, as appears by the subsequent condemnation. There was on that day a total loss which, as things were then seen, might afterwards be reduced if in the end the vessel was released."

Lord Halsbury agreed that there was a total loss from the time the boarding party took possession of the

*Romulus*, and he commented on the case of *Goss v. Withers*, (2 Burr. 683) at page 340, as follows (Italics ours):

“This very quotation arose just 150 years ago in *Goss vs. Withers*, and was argued before Lord Mansfield, and he observed that a large field of argument had been entered into, and it would be necessary to consider the laws of nations, our own laws and Acts of Parliament, and also the laws and customs of merchants which make a part of our laws. After taking time to consider, the learned judge, delivering the judgment of the whole Court on November 23, 1758, then decided what would be enough to decide this case. After going through the whole law and discussing the question of how far and to what extent the seizure of the vessel affected the change in property, he said: ‘*But whatever rule ought to be followed in favor of the owner against a recaptor or vendee it can in no way affect the case of an insurance between the insurer and insured. . . . The ship is lost by the capture though she be never condemned at all nor carried into any port or fleet of the enemy, and the insurer must pay the value.*’ If after condemnation the owner recovers or retakes her the insurer can be in no other condition than if she had been recovered or retaken before condemnation. The reason is plain from the nature of the contract; *the insurer runs the risk of the insured and undertakes to indemnify.* He must therefore bear the loss actually sustained.”

It is to be emphasized that the rule of relation back and right of abandonment as laid down by Lord Mans-



field in the earlier cause of *Goss v. Withers* (1758), 2 Burr. 683, and quoted with approval by Lord Halsbury as above, is equally applicable whether or not condemnation should follow the seizure. In other words, as between insurer and insured, the loss arises unconditionally under the policy at the moment of seizure.

Although the case of *Cory v. Burr* (1883), 8 A. C. 393, *supra*, involved circumstances which distinguish it from the present case, and the policy there contained a warranty "free from capture and seizure and the consequences of any attempts thereat", the decision reached applies inversely and the expressions of Lord Blackburn, in his opinion, are pertinent, in clearly stating that the loss would have been attributable to the seizure but for the exception. He said at p. 398 (*Italics ours*):

"The policy here is in the ordinary Lombard Street form, which has been in use for more than a century, and contains the ordinary enumeration of the perils against the loss from which the underwriters undertake to indemnify the assured. *Many of these, as for instance men-of-war, enemies, pirates, rovers, and I may add barratry of the master and mariners, do not in themselves necessarily occasion any loss; but when by one of those the subject assured is taken out of the control of the owners, there is a total loss by that peril, subject to be reduced if by subsequent events the assured either do get, or but for their own fault might get their property back; Dean v. Hornby, 3 E. & B. 180. There are other perils such as takings at sea, arrests, restraints and detainments of princes, which from their nature involve such a*

*taking of the subject insured out of the control of the owners. That being the case, supposing there had been no warranty at all, was there a loss here which would be one for which the underwriters would be liable? Upon the facts stated I cannot doubt it."*

The case of *Ruys v. Royal Exchange Assurance Corporation*, (1897) 2 Q. B. 135, was one in which suit was brought under a policy of insurance against war risks. The vessel had been captured by an Italian cruiser while carrying a cargo of ammunitions to Abyssinia, which was at war with Italy. A few days after the capture the plaintiffs, owners of the vessel, gave notice of abandonment. Although the vessel was later declared lawful prize, the war being at an end, she was ordered to be restored to her owners, which was done. The question then arose as to the effect of such restoration on the pending suit under the policy, and the Court held that the owners were entitled to recover as for a total loss. That case also supports the doctrine of relation back to the seizure, and the right to abandon at that moment, despite the outcome of seizure in respect of ultimate title to the vessel.

In *Leyland Shipping Co., Ltd. v. Norwich Union Fire Ins. Society, Ltd.*, (1918) A. C. 350, where the steamship *Ikaria* was insured against perils of the seas with a warranty against consequences of hostilities, a suit arose by reason of the loss of the *Ikaria* after having been torpedoed by a German submarine. The *Ikaria* was placed alongside a dock in Havre, and a gale having

sprung up, she was removed inside the outer breakwater. She later sank. The question then arose as to what was the proximate cause of her loss, whether it was the original torpedoing of the vessel, or the gale. The Court held that the real cause was the torpedoing.

Lord Shaw of Dunfermline said, in discussing the proximate cause of the loss, at p. 371:

“The vessel, in short, is all the time in the grip of the casualty. The true efficient cause never loses its hold.”

Similarly, in the present case, the *Llama* was all the time in the grip of the captor, and of its armed representatives, whose control never ceased, but efficiently caused the loss.

After the seizure, the adventure of taking the ship into Kirkwall was that of the British Naval authorities, and the risk and responsibility of it was theirs. The result was as in the case of *Andersen v. Marten*, (1908) A. C. 334, that the shipowners lost their ship by arrest and seizure and the captors lost their capture by stranding.

It is submitted that the loss of the *Llama* having occurred while in the possession and control of the British Government, whose acts constituted “an arrest, restraint and detainment” as “consequence of hostilities” within the meaning of the policy, the Petitioner is thereby entitled to indemnification from the respondent as for a total loss *ab initio* under the foregoing authorities.

It was contended in the Court below and the Circuit Court of Appeals found that the loss was not proximately caused by the seizure, but was the result of an ordinary sea peril not covered by the policies.

We reiterate that under the principles of the law of insurance as laid down by the cases cited above, it is immaterial as between the insurer and the insured, what might have been the immediate cause of the destruction of the vessel. Since the loss took place after the seizure and while the vessel was under the control of and in the possession of the British Governmental representatives, the loss was primarily the loss of the British Government, for which possibly it may be required to account to the United States as underwriter, when the latter has paid the amount due under the policies and becomes entitled to an underwriter's subrogation.

In considering perils and risks undertaken by an underwriter in an insurance policy in relation to the doctrine of proximate cause, it must be borne in mind that there are two kinds of perils and risks:

1. Perils which do not in themselves cause any loss or damage to a ship, but do cause a loss of a ship to the owner.

Illustrations of this class of perils are arrests, seizures, captures, piracy, etc.

2. Perils which cause a loss or damage to a ship which the owner may or may not have lost from some other peril.

Illustrations of this kind of perils are torpedoings, strandings, collisions, etc.

Thus, if a vessel has been captured as a prize by the enemy and subsequently while in possession of the captors burns up, the real situation is that the owner lost the ship by the capture, but the captor lost its prize by a fire.

Similarly, in this case the vessel having been arrested, restrained and detained, and the owner having been deprived of possession and control by operation of those perils, the loss of the vessel to the petitioner was by those perils.

It is immaterial, therefore, to the Petitioner how the ship was finally destroyed, because the vessel was lost to him when she was arrested, restrained and detained, which were perils expressly assumed by the United States in the policy.

In the courts below the United States laid great stress on *Morgan v. United States*, 14 Wall. 531.

The report of the *Morgan* case in this Court is so meagre that it is impossible to understand exactly what facts the Court was there dealing with.

Reference, however, to the opinions in the Court of Claims, gives a fuller report of the circumstances involved in this case.

In the report of the *Morgan* case in the Court of Claims, 5 Court of Claims Reports 182, the following facts appear:

During the Civil War, by a charter party, the owner voluntarily chartered a vessel to the United States for \$182.25 for each day the vessel should be employed. The vessel was to receive on board, when tendered alongside,

such troops, men, animals, supplies and cargo as a quartermaster should direct, and proceed direct to such ports and places *as ordered by a quartermaster of the United States Army*. The charter party contained this clause:

*"The war risk to be borne by the United States, the marine risk to be borne by the owners."*

There was no statement in the charter party that, included within the meaning of the term, war risk, were *"takings at sea, arrests, restraints and detainments of all kings, princes and peoples of what nation, condition or quality soever."*

The vessel carrying troops and stores was directed to put to sea by the orders of a quartermaster (the person authorized to give orders by the charter party). These orders of the quartermaster were given to meet what he thought the exigency of the service demanded, although the danger was obvious and the master and pilot advised against it. While crossing a dangerous bar the vessel navigated by her own master stranded and sustained damage.

The Court held that the owner could not recover for the damage under the charter party.

In the Court of Claims there were three opinions. The first was Chief Justice Casey's, with whom concurred Milligan, J. Loring, J., filed a concurring opinion. Nott, J., dissented and with him Peck, J., concurred.

Chief Justice Casey's opinion as to whether the loss was a war risk or marine risk was apparently put on the

ground that the loss could not be a war risk because the damage did not result directly or proximately at least "*from the operations of the public enemy.*"

Loring, J., in concurring in the result placed his decision on the following ground:

"I think that these facts do not show that the vessel was taken from the control of the master or that his action and discretion were overruled by the officers of the United States."

In the Supreme Court the opinion of Mr. Justice Davis partly proceeds on the ground that the owner, under the charter party, had undertaken such risks as were incident to a vessel assisting in and engaging in military operations and that might be caused by following out the orders of the Government.

At p. 535 (14 Wall.) Mr. Justice Davis said (*Italics ours*):

"If, therefore, the stranding of the boat in going over the bar was owing to a peril of the sea, her owners, and not the government, must bear the loss. That the high wind and low stage of water were the efficient agents in producing this disaster are too plain for controversy. They were the proximate causes of it, and in obedience to the rule '*causa proxima non remota spectatur*' we cannot proceed further in order to find out whether the fact of war did not create the exigency which compelled the employment of the vessel. If it did, it was known to the owners when the charter-party was formed, who, with this

*knowledge, became their own insurers against the usual sea risks, and must abide the consequences of their stipulation."*

The *Morgan* case is clearly distinguishable from the case at bar. The ship was there damaged while the master, navigating his own vessel, was carrying out an order given by a person authorized to do so and whom the master was apparently bound to obey under the specific terms of the charter party.

Thus, while the *Morgan* case is authority for the proposition that a charterer must perform his charter party, it is not authority for saying that a loss is not due to a restraint or detainment, when the master is compelled against his will to navigate a vessel over a dangerous bar in a situation in which possession and control of his ship have been taken from him by an armed force representing a belligerent, and where no charter party is involved in which it is specifically provided that the master shall carry out the orders of a military officer.

Since the decision of the court below this Court has decided the case of *The Napoli, Queen Insurance Company of America v. Globe & Rutgers Fire Insurance Company*, 263 U. S. 487.

In that case the libelant had insured certain cargo on the Steamship *Napoli*, lost by collision, against marine risks, and the respondent had insured it against war



risks. The Court was asked to assume that the exception contained in the libellant's marine policy against "all consequences \* \* \* of hostilities or warlike operations" was co-extensive with the clause in respondent's war risk policy of liability for "acts of kings, princes and people authorized by and in prosecution of hostilities between belligerent nations."

The clauses it will be noted are wholly different from those in the case at bar.

It was contended that the loss by collision was to be attributed to consequences of hostilities or warlike operations, because the vessel had sailed under convoy and without lights "as a necessity of war". The routes and particulars of navigation were determined by a naval command. The vessel was navigated by her own captain in the convoy.

The Court held that the loss was a marine risk and declined to regard factors which had increased the marine perils as causes thereof.

It will be observed that this Court in the *Napoli* case was called upon only to construe the words, "all consequences \* \* \* of hostilities or warlike operations."

The Court was not asked to determine, and the question was not before the Court, whether there had been a "taking at sea", a "restraint", "arrest" or "detainment", nor did the Court have before it the question of responsibility for the loss of the ship where following a

taking at sea, a restraint and a detainment the ship had been destroyed by the negligence of a British prize officer who had taken possession of the vessel and was exercising supreme dominion over it.

In the *Napoli* case the vessel had not been taken out of the owner's possession and control, and all that was decided in that case was that a collision, occurring while a vessel was traveling in a convoy, without lights, was not a consequence of hostilities or warlike operations.

In the *Napoli, Queen Insurance Company v. Globe & Rutgers*, 263 U. S., at page 493, the court said:

"There are special reasons for keeping in harmony with the marine insurance laws of England, the great field of this business, \* \* \*"

As has been pointed out above, the decisions of the English Courts on the facts involved in this case uniformly hold that where there has been an arrest, restraint or detainment the proximate cause of the loss of the ship is held to be that arrest, restraint or detainment, if, before the ship is freed from those perils, she is destroyed by any other cause.

That this is also the law of the United States is shown by *Muller v. The Insurance Companies*, 246 Fed. 759 and *Magoun v. New England Marine Insurance Company*, (1840) (1 Story 157, 3 Law Rep. 127), 16 Fed. Cases 483, Fed Case No. 8961.

## SECOND POINT.

PETITIONER IS ENTITLED TO INTEREST ON THE AMOUNT DUE UNDER THE POLICIES FROM FEBRUARY 11, 1917.

The policies in question here were issued by the Treasury Department under the Act of Congress of September 2, 1914, entitled "*An Act to Authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department.*"

The preamble of the Act states its purpose as follows:

"WHEREAS the foreign commerce of the United States is now greatly impeded and endangered through the absence of adequate facilities for the insurance of American vessels and their cargoes against the risks of war; and

"WHEREAS it is deemed necessary and expedient that the United States shall temporarily provide for the export shipping trade of the United States adequate facilities for the insurance of its commerce against the risks of war:"

By Section 2 the Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, was directed to make provisions for insurance by the United States against war risks.

By Section 3 the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, was authorized to adopt and publish a form of war risk policy

and fix reasonable rates of insurance for the insurance of American vessels, their freight and passage moneys and cargoes against war risk.

By Section 4 the Bureau of War Risk Insurance, with the approval of the Secretary of the Treasury, was given power to make any and all rules and regulations necessary for carrying out the purposes of the Act.

By Section 6 the Director of the Bureau of War Risk Insurance was directed to pay all claims for losses promptly.

It will be seen from the foregoing that the United States Government, in pursuance of a policy of assisting its trade, decided to go into the business of insuring war risks in order to provide adequate facilities for the insurance of its commerce against the risks of war and the prompt payment of losses due to war risks.

In pursuance of the policy announced by the Act and in order to carry out its provisions, the United States adopted the standard form of insurance policy which had been in use by private companies for the insuring of war risks from time immemorial.

The policies in question contained the following provision:

*"In the event of loss and claim, prompt notice should be given to the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau."*

It will be observed from the foregoing that the United States entered into an express contract to pay any loss due under the policy, within thirty days after complete proofs of interest and loss had been filed with the Bureau.

The Petitioner filed its complete proof of loss with the Treasury Department on January 11, 1917, Ex. L8, p. 128. Claim was denied on March 18, 1918. Ex. L8, p. 128.

Under the express terms of the policy, therefore, the Petitioner became entitled to payment of its loss within thirty days from January 11, 1917, if entitled to payment at all.

Under the standard form of policy in question, which was adopted by the War Risk Bureau in pursuance of express authority conferred on it by the Act, all private underwriters are obliged to pay interest on the amount of the loss when the loss is not paid within the time allowed by the policy.

The purpose of Congress, as stated in the Act which created the War Risk Bureau, was to provide war risk insurance for American commerce and for the prompt payment of losses thereunder. It must be obvious that this purpose is not carried out and the assured is not compensated by way of insurance if he receives payment for his loss ten years after the loss occurred.

This is not a claim for interest due to delay in the voyage, but for damages for breach of an express contract, to wit: to pay that loss at a specified time.

The claim is for damages of which interest is the proper measure.

The Petitioner is as much entitled to damages for the failure of the United States to pay the loss at the stipulated time as it would be to damages for any other breach of the agreement.

This Court has held that where the United States is obligated to pay a claimant "Just Compensation", the claimant, even in the absence of statute, is entitled to interest between the time the property is taken and the time the value thereof is paid. *Seaboard Air Line Ry. v. United States*, 261 U. S. 299. The theory is, of course, that compensation, payment of which is postponed, cannot be just unless interest is allowed during the time when the claimant is deprived both of the property taken and the use of its value.

Similarly, the United States does not fulfill its obligation to insure a claimant against a loss if it fails to pay the claimant for the loss at the proper time. The very nature of insurance, as well as just compensation, requires prompt payment, or, failing that, such additional allowance of money in the form of interest as will put the claimant in the position in which he would have been if the amount due had been paid at the proper time.

In the Court below the United States did not dispute that interest is payable against the United States when authorized by statute, or where there is an agreement on the subject. It sought to avoid the payment of damages for its breach in failing to pay at the time it contracted to pay under the following warranty contained in the policies (Italics ours):

*“Warranted free from any claim for interest, loss of market or damage by deterioration due to delay.”*

This is the usual clause inserted in all war risk policies to provide against any claim for interest as a direct loss under the policy *due to delay in the voyage*. Similarly the warranty protects the insurer against claims under the policy for loss of market *due to delay* in the voyage, or for damage by deterioration *due to delay* in the voyage.

The warranty does not mean, as claimed by the United States, that interest is not to be paid on an admitted loss under the policy when that loss is not paid at the time stipulated in the policy. The warranty simply excludes as losses under policy a direct claim for interest as a loss under the policy because the voyage is delayed.

It is submitted that the clause of the policy here applicable is that which reads:

*“Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.”*

The United States having breached its express contract to pay the loss on February 11, 1917, the Petitioner is entitled to damages for that breach measured by interest at the rate of six per cent.

It is preposterous to suppose that the warranty cited by the United States was intended to afford it immunity from an obligation expressly assumed in its agreement to pay the loss at a specific time.

The Petitioner therefore is entitled to the following sums:

Total loss of the SS. *Llama* on Certificate No. 1263..... \$115,000.00  
 With interest at the rate of 6% from February 11, 1917.

Total loss of the freight and advances on said vessel under Certificate 1269 44,686.82  
 With interest from February 11, 1917, at 6%.

Expenses incurred by libelant under sue and labor clauses under Certificates Nos. 1263 and 1269, in accordance with the agreement of counsel, p. 106..... 2,270.34  
 With interest from February 11, 1917, at the rate of 6%.

### LAST POINT.

THE DECISION OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT SHOULD BE REVERSED, AND THE FINAL DECREE OF THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY, SHOULD BE REINSTATED WITH A MODIFICATION SO AS TO ALLOW THE PETITIONER THE SUM OF \$2270.34 FOR SUE AND LABOR EXPENSES INSTEAD OF \$2751.97; AND WITH THE FURTHER MODIFICATION SO AS TO PROVIDE FOR INTEREST AT THE RATE OF SIX PER CENT. FROM FEBRUARY 11, 1917, TO THE DATE OF PAYMENT, WITH COSTS.

Respectfully submitted,

CLETUS KEATING,

JOHN M. WOOLSEY,

*Counsel for Petitioner.*



# In the Supreme Court of the United States

OCTOBER TERM, 1923.

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STANDARD OIL COMPANY OF NEW JERSEY,	}	No. 549.
petitioner,		
v.		
UNITED STATES OF AMERICA, RESPONDENT.		

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*PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION.

This record presents questions of fact only. They relate to the application of the doctrine of proximate cause—always a question of fact; in law cases a question for the jury to determine. The tanker *Llama* was lost by stranding (an ordinary marine peril) brought about by errors of navigation on the part of ship officers directing her navigation (also an ordinary marine peril). The stranding occurred in broad daylight, under the best of weather and sea conditions, and while the vessel was navigating an open seaway four miles in width. The Circuit Court of Appeals, after determining these facts, reached the only conclusion warranted—that the loss of the *Llama* was due to marine casualties and had no relation to war risks.

*The Government must dissent from the statement of facts and conclusions which the petition and brief suggest.* They must be based on some misconception of the findings and conclusions of the Circuit Court of Appeals. Therefore the majority opinion of the Circuit Court of Appeals is now excerpted so that the facts as found by that Court can be forcefully brought to the attention of this Court. They confirm the accuracy of the Government's observations and review.

Inquiring as to the questions involved in this case, we note that as the owners of the *Llama* assumed all marine risks and as she was lost by stranding, a marine peril, and as such stranding was caused by errors in navigation, also a marine peril, the question involved is whether the insured has shown that the proximate cause of the loss was not these marine perils or errors in navigation and stranding but was a war peril insured against, namely, "takings at sea, arrests, restraints, and detainments of all Kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations."

The *Llama* sailed from New York for Copenhagen on October 14, 1915. She was routed "via Kirkwall," pursuant to a prior arrangement made by her owner, the Standard Oil Company, so that her documents could be examined. In pursuance thereof, and as had been done on a previous voyage of the *Llama*, she was, on October 29, 1915,

hailed and stopped by the British cruiser *Virginia*, and boarded by a lieutenant and four men. After the examination of her papers, which showed the vessel was duly routed "via Kirkwall," the *Llama* proceeded, the lieutenant and his party remaining on board. He had been directed by the *Virginia* to see that the *Llama* keep north of Scule Skerry and North Rona, well known landmarks, and not to pass between the islands at night.

Subject to these general directions, *the captain of the "Llama,"* as would appear from the absence from the log of anything indicating a departure from his previous conduct, *laid off, entered all courses, and gave directions.* \* \* \* The log entries contain the usual recital by name of the ship's officers on watch and of the ship's men on the lookout. Other than the above the log contains no entry or reference to the cruiser or of the officer and his men aboard the *Llama*. The entry of the 30th records that on that night North Rona was reached, viz, "10.35 North Rona abeam, dist. off 9'," where the *Llama* hove to for the night at the Noup Head. From Noup Head there were two courses to Kirkwall, one called the Fair Island passage; the other, which the *Llama* took, was called the Westray Firth. The proofs show that the master of the *Llama* had taken this latter passage on the previous voyage, and that the British officer on board had never taken it. (*Italics ours.*)

On the next morning while the *Llama* proceeded through the Westray Firth, where there was an open leeway of some four miles, she struck a submerged but charted reef and stranded. The time was daylight, and the sea conditions, as shown by the log, were "moderate sea, clear"; and the entry in the log "9.07 Struck a reef in Westray Firth."

\* \* \* \*

From the above extracts it will appear that the loss of the *Llama*, as made out by contemporaneous written statements of her log and officers, was due to a marine peril, to wit, "a submerged and uncharted rock," and that when the ship was struck, the vessel was holding a course "*which was considered safe by the Master,*" and that "*it could not have been avoided.*" The physical fact being that the boat was lost by reason of its stranding, and stranding being prima facie a marine peril, it follows the burden is on the ship's owner to show that the stranding was caused by one of the war risks insured against as heretofore quoted; *Monroe v. War Risk Ass'n*, 34 Times L. R. 331. This burden, the Court below was of opinion the insured met, finding in substance that at the time of the stranding the *Llama* was controlled and navigated by the British lieutenant who boarded her. (Italics ours.)

After a study of the proofs, we reach a conclusion different from that of the Court below, and that in the light of the facts and law the libel should be dismissed.

\* \* \* \*

If these several statements be accepted as a true and full account of the stranding, we have here a loss from a marine peril and resulting from following a course in which both the captain and the British officer concurred. *They suggest no dominating control, no superseding of the captain by the British officer, but, on the contrary, the selection of the course by the captain, and the justification of that selection by the concurrence of the British officer, and so regarded we have the case of a peril and a loss due, not to a war risk, but to a marine peril, for the concurrence of the two men in the course was not something done by stress of war, but at most by the concurrent mistake of two men who were attempting to safely navigate a ship through an open fairway, but who mistakingly stranded her on a submerged, unknown reef. Taken at its most, the captain thought he was right, the British officer thought the captain was right, but in point of fact both were wrong. There was nothing partaking of war in the ship going on a submerged, uncharted rock owing to the miscalculation of those directing her course, and therefore the cause of the loss, viz, the stranding, the marine character of the peril, is not affected by the one directing the course, whether his or their uniforms were those of a mariner or a naval officer. The stranding was the dominant causal factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint, but mistaken,*

navigation of the captain and the British officer. (*Italics ours.*)

\* \* \* \* \*

When to this is added the fact that the captain had taken the *Llama* through the Westray Firth before, but the British officer had never been through it; *that the captain admits that when the officer came aboard he made no statement that he himself was to navigate the vessel or gave any instructions to his own men that they were to do so;* \* \* \* and in further view of the testimony of the British officer that he did not oust the captain's control over the navigation of the ship, we are clear that *the libellant has not met the burden resting upon it of showing that the causa causans of the loss was a war risk and not a marine one.* (*Italics ours.*)

\* \* \* \* \*

The view we have taken of the situation, namely, *that the libellant has not satisfied us that the "Llama" was being navigated by the British officer, when she stranded,* renders it needless to refer to the many authorities cited, all of which have had our careful examination. (*Italics ours.*)

The controlling factors are that owners had routed the *Llama* via Kirkwall under prior arrangement with the British Government. The vessel was bound there at time of stranding. After boarding, the *Llama* was navigated by her master, who plotted and set all courses. The stranding (marine peril) was brought about by faulty navigation of ship officers—failure to observe landmarks, pursuing a course too

near the shore line, failure to keep a proper lookout (all marine perils). The loss of the *Llama* resulted proximately from marine perils.

While the loss happened October 20, 1915, the proofs of loss were not filed until January 11, 1917, and the present proceedings were not instituted until May 5, 1919.

#### THE LAW.

The substantial questions thus presented being questions of fact—the application of the principles of proximate cause—it is doubtful if any analysis of the decisions is necessary. The conclusions reached by the Circuit Court of Appeals find full affirmance in several opinions of this Court:

*Morgan v. United States*, 81 U. S. (14 Wall. 531): (1) Military order of United States officer against protest of master and of United States Government pilot in charge—War peril—caused (2) stranding—marine peril. Held proximate cause was (2) stranding.

*Leary v. United States*, 81 U. S. (14 Wall. 607): (1) Military order of United States Army officer—war peril or extraordinary marine peril—caused (2) stranding—ordinary marine peril. Held proximate cause was (2) stranding.

*Keybold v. United States*, 82 U. S. (15 Wall. 202): (1) Military order of United States Army officer—war peril—caused (2) shipwreck in ice floe—marine peril. Held proximate cause was (2) shipwreck.

*Columbia Insurance Company v. Lawrence*, 10 Peters (U. S. Sup. Ct.) 507: (1) Negli-

gence—caused (2) fire. Held proximate cause was (2) fire.

It also finds full confirmation in the most recent English cases where the subject has been discussed:

*The Matiana*—House of Lords—England—1920: 36 L. T. R. 791: (1) Military order permitting no discretion of Master of vessel—war peril—caused (2) stranding—marine peril. Held proximate cause was (2) stranding.

*The Petersham*—House of Lords—England—1920: 36 L. T. R. 791: (1) Military order permitting no discretion of master of vessel—war peril—caused (2) collision—marine peril. Held proximate cause was (2) collision.

It is observed that the loss of the *Llama* happened while the *Llama* was pursuing a course selected by her master. The British armed guard (not prize crew) gave no orders. *Any general directions given by the cruiser previously then had been fully complied with and related to courses which the Llama would have taken in any event.*

**There is no conflict of decisions.**

Petitioner suggests that the present decision is in conflict with the opinion of the Circuit Court of Appeals for the Third Circuit in the case of *Mueller v. Globe & Rutgers Fire Insurance Company*, 246 Fed. 759. There can be no doubt that the present decision is in full accord with the principles stated by this Court in the cases cited above. The Government suggests there is no conflict in the decisions of the Circuit Court of Appeals. *The application of the*



*doctrine of proximate cause was the controlling factor in the Mueller case.* The facts there were that the British officers required the master of the steamship *Canadian* in the night time, when shore lights were extinguished, to pursue a definite and dangerous course, proximately causing the stranding. The Court in the Mueller case said (page 762):

The second contention herein raises ultimately the question of proximate cause.  
 \* \* \* Proximate cause is a question for the jury. \* \* \* Thus we find no intervening cause breaking the causal connection between the control assumed by the "*Hilary*" boarding party and the loss of the ship. *There was no time when the master was left to navigate his own ship in his own way.* She was lost while he was doing what he had to do. (Italics ours.)

In our case the master was left to navigate his ship (*Llama*), selecting her course, charting the same, and navigating his ship as he believed safety required. The *Llama* was lost in broad daylight while proceeding down a fairway four miles wide under the best weather conditions and while following a course laid down by her master with sailing instructions under his direction.

The Government has examined the briefs filed in the case of *The Queen Insurance Company of America* against *The Globe & Rutgers Fire Insurance Company*, October Term, 1923, No. 116, in which case this Court has granted an application for certiorari.

The facts and history of that case being so different from the facts and status of the present case, the Government confidently observes such case can have no relation to the questions which the present application properly may suggest.

The final observation made by the Government is that in all the cases cited by the petitioner as interpreting and applying the "seizure" or "detainment" clauses in war-risk insurance policies, at the time of the seizure or detainment, the owners and masters were deprived of authority and control over their vessel by the captors. In most of the cases at the time of seizure or detainment, formal declaration of seizure was made. In our case the master and owner were not deprived of authority and control over the *Llama*, and the loss happened through stranding while the *Llama* was being navigated by her master. *The act of boarding without control could not be characterized as a seizure or detainment. Even if there be seizure or detainment within the meaning of the policy, which is denied, the ultimate finding must rest upon the application of the question of proximate cause, which the Court has resolved in favor of the Government.*

#### CONCLUSION.

The Government denies the record in this case suggests many of the questions which petitioners advance. The flat question presented is the application of the doctrine of proximate cause. The Circuit Court of Appeals has consistently ruled properly.

Unless this Court believes it should vary its settled practice to decline to review cases presenting fact questions, the present application should be denied.

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ALBERT OTTINGER,

*Assistant Attorney General.*

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*Special Assistant to the  
Attorney General, in Admiralty.*

OCTOBER, 1923.

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## INDEX

	Page.
I. STATEMENT OF CASE.....	1
II. STATEMENT OF QUESTIONS INVOLVED.....	12
III. QUEEN INS. CO. v. GLOBE INS. CO. (263 U. S. 487).....	12
IV. ARGUMENT.....	16
1. Burden of proof.....	16
2. Proximate cause of <i>Llama's</i> loss marine perils.....	16
3. The stranding brought about by errors of navigation of ship's officers and crew.....	34
4. <i>Muller v. Ins. Co.</i> .....	42
5. The seizure and detainment clauses.....	44
V. INTEREST.....	47
VI. CONCLUSIONS.....	48

## INDEX TO CASES

<i>American Hawaiian S. S. Co. v. Bennett</i> , 207 Fed. 510.....	19
<i>Anderson v. Martin</i> , 1908 A. C. 337.....	46
<i>Britain S. S. Co. v. King</i> (1921), 2 A. C. 99, 113, 119.....	16
<i>Cory &amp; Sons v. Burr</i> , 8 A. C. 393 (1893).....	44
<i>John A. Donald v. United States</i> , 39 Ct. Cl. 357.....	19
<i>General Mutual Ins. Co. v. Sherwood</i> , 14 How. 361.....	28
<i>Goff v. Withers</i> , 2 Burr. 263.....	45
<i>Hagimayer Trading Co. v. St. Pauls Ins. Co.</i> , 266 Fed. 14.....	19
<i>Ins. Co. v. Transp. Co.</i> , 12 Wall. 194.....	19, 27
<i>Leary v. U. S.</i> , 81 U. S. 607.....	19, 22
<i>Morgan v. U. S.</i> , 61 U. S. 531.....	18, 20
<i>Matiana, The</i> , 1 A. C. 99 (1921).....	20, 29
<i>Magoun v. New Eng. Ins. Co.</i> , 1 Story 157.....	45
<i>Munro Brice &amp; Co. v. War Risk Assn.</i> , 34 L. R. 331.....	16
<i>Muller v. Ins. Co.</i> , 246 Fed. 759.....	42
<i>Petersham, The</i> , 1 A. C. 99 (1921).....	20, 29
<i>Queen Ins. Co. v. Globe Ins. Co.</i> , 263 U. S. 487.....	12
<i>Reybold v. U. S.</i> , 82 U. S. 202.....	19, 24
<i>Trinder Anderson &amp; Co. v. Thames &amp; Mersey Ins. Co.</i> , 1898, 2q. B. 114.....	20

## APPENDIX

Majority opinion of the Circuit Court of Appeal.....	49
26816-25†—1	(i)



# In the Supreme Court of the United States

OCTOBER TERM, 1924

STANDARD OIL COMPANY OF NEW JERSEY, as owner of the Steamship "Llama," petitioner	}	No. 169.
v.		
THE UNITED STATES OF AMERICA		

ON WRIT OF CERTIORARI TO THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

## BRIEF FOR THE UNITED STATES

### I

#### STATEMENT OF CASE

The libel is filed to recover upon two war-risk insurance policies issued by the Government for loss of the tanker *Llama* and her freights and advances through stranding in daytime under the best weather and sea conditions, while proceeding through Westray Firth north of Scotland with a channel way four miles in width. Her owners, under the usual method of self-insurance, had assumed all marine risks. Admittedly the *Llama* was lost by stranding (an ordinary marine peril) which was caused by errors

of navigation on part of ship's officers (also ordinary marine perils). Prior to the errors of navigation, a British armed guard, following the usual practice, had boarded the tanker to see that she put into Kirkwall as the previous arrangements by her owners with the British Government required and which routing the bill of lading covered. This boarding is characterized as seizure or detainment. The assured asserts that the loss relates thereto and is a loss from war perils. Even if this boarding be seizure or detainment, which the Government denies, the seizure is not the proximate cause of the loss, which was stranding brought about by negligent navigation.

The facts are stated in sequence. The tanker *Llama*, formerly owned by the German subsidiary of the petitioner and then flying the German flag, on October 21, 1914, was transferred and registered in the name of petitioner with change to American flag. After the transfer the vessel was employed in carrying petroleum products trans-Atlantic. For purposes of its own, late in 1914 and in 1915, the British Government made it a practice to board vessels bound for Scandinavian ports to satisfy itself that the cargoes aboard were neutral and not destined for aid of its enemies. For such examination the vessels were stopped and an armed guard consisting of a young navy officer and several seamen was placed aboard to see that the vessel proceeded to a named port, usually Kirkwall, where her papers would be examined. After the production of satisfactory evidence that the cargo was neutral-owned and not destined

for the enemy, the vessel continued her voyage to destination. In order to avoid possible delays, prior to the *Llama* loss, the Standard Oil Company made an arrangement with the British Government to route all its vessels via Kirkwall (the port of examination) for the purpose of the examination of the vessels' documents as stated. This intended to and did provide considerable dispatch to the tanker.

The war-risk policies insured the whole of the *Llama* and her freight and advances from loss by war risks. The applicable clauses of the policy read:

Touching the adventures and perils which the insurer is contended to bear, and does take upon itself, they are of men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints, and detentions of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities of warlike operations, whether before or after declarations of war \* \* \*.

*Warranted free from claim consequent upon or arising from the ultimate destination of the cargo being the country of a belligerent. (Italics ours.)*

They covered a voyage from New York to Copenhagen and return "*with privilege of a port or ports of call for admiralty instructions.*" The bills of lading called for a voyage "now lying in the port of New York and bound for Copenhagen via Kirkwall." These routings were for carrying out the arrangement made by owners with the British Government



for sending all its vessels to an admiralty port of call for examination of documents.

While proceeding upon her voyage toward Kirkwall (north of Scotland), when at a distance approximately 400 miles west of Orkney Island, the *Llama* was hailed by the British Cruiser *Virginian* and then boarded by a young British naval officer, then 22 years of age, and four men, consisting of a petty officer, a stoker, a marine, and an a. b., to make certain that the vessel did report to Kirkwall as her documents provided and as the arrangement by owners with the British Government required. This young lieutenant had joined the British Navy in October, 1914, then having the lowest grade of merchant license (second officer) issued by the British Government. The necessity of taking aboard the armed guard and of stopping at Kirkwall had been required on the previous voyage of the *Llama* and of all other vessels of the libelant and was expected. *No objections were offered.* The instructions issued by the Government to the boarding officers, were (R., p. 92)—

Responsibility for the navigation of the vessels sent in should *never be undertaken unless absolutely necessary.* The master should be given the special route to be followed, the officer in charge of the armed guard exercising sufficient supervision to see that this is carried out and rendering any assistance asked for.

We emphasize that this boarding did not change the voyage upon which the vessel was routed. The *Llama* was putting into Kirkwall just as the special

agreement by owners with the British Government required and for an examination of documents to determine ultimate destination of cargo which such arrangements intended. Her owners had obligated themselves to the British Government to have the vessel put into Kirkwall for such examination so as to determine ultimate destination of cargo. The war risk policy covered "privilege of port or ports of call for admiralty instructions" and the typewritten rider attached to the policy provided:

*Warranted free from claim consequent upon or arising from the ultimate destination of the cargo being the country of a belligerent.*

Query: In any view does not this rider relieve the underwriter from any consequences of loss by stranding through putting into Kirkwall for examination to determine ultimate destination of cargo? We say it does.

After an examination of the vessel's papers (covering only a few minutes, R. p. 252) which showed her routing to Kirkwall, the *Llama* proceeded toward Kirkwall, the only instructions given by the cruiser was to see that the vessel proceeded north of Seule Skerry and North Roma, well-known landmarks, and not to pass between the islands at night. (R. p. 66.) The course the tanker was on would have taken her north of these landmarks. The master of the *Llama* laid off all the courses on the chart and gave the directions for the courses. The tanker continued upon her original course under the direction

and control of her own master, officers, and crew. (R. p. 67.)

On October 30 the vessel lay off Noup Head, the vessel having hove to for the night, intending to pass between the islands by daylight. The master, as representing owners, agreed this was the proper thing to do. (R. p. 53.) There were two passages from Noup Head to Kirkwall, one called the Westray Firth passage and the other the Fair Island passage; the latter is about 50 miles longer.

The master of the *Llama* had taken the Westray Firth passage on the previous voyage. The naval lieutenant had never been through this passage, always using the Fair Island passage. (R. p. 73, 74.) The British Island Pilots for 1915 (No. 149, Vol. VI, p. <sup>211</sup>) declares Westray and Stronsay Firths as "great natural thoroughfares." It describes Fair Isle (p. 163) as "useful fairway beacon bound to Archangel and Greenland (via Shetland)." There is a seaway four miles in width for the safe navigation of vessels through Westray Firth, and at the time the passage was undertaken the weather was clear, fair wind, and smooth sea. The stranding occurred at 9:07 a. m. The Circuit Court of Appeals has determined that the route through Westray Firth was selected by the master and the sailing course plotted and sailing directions upon which the vessel was at time of stranding given by the master to the ship's officers. The master showed such course to the British lieutenant. The

lieutenant approved the course, as it took the vessel to Kirkwall. (R. p. 178, 183.)

Prior to the stranding and from the time that the 8 o'clock watch began the ship had no lookout, which was a contributing fault to the stranding, because had there been a ship's lookout properly stationed the breakers would have been apparent and proper steps could have been taken to avoid the submerged rocks on which the vessel stranded. Again, the attention of the officer on watch was directed to breakers by one of the British guard when the vessel was one or two miles distant, but such officer took no steps to inform the captain or change course. There were clear errors of navigation in the plotting of the course and the sailing directions, otherwise this vessel would not have stranded on charted rocks in daytime where the fairway was four miles in width.

While proceeding through Westray Firth, having four miles in width of seaway, weather clear, sea smooth, the *Llama* stranded at 9.07 a. m. (according to her log) on October 31, 1915, and became a total loss.

We read the contemporaneous written statements evidenced by the ship's log and the protests and sworn affidavits of the ship's officers before the Recorder of Wrecks as definitely determining that the loss of the *Llama* was due to marine perils and not proximately related to the boarding by the British guard two days previously.

The log book designates a voyage from New York to Copenhagen via Kirkwall. It is kept in the same manner before the boarding as afterward and except for entries made in the rough log on October 29, the day of the boarding, no reference is made of the British lieutenant or his guard. Had the lieutenant assumed control of the navigation, such fact would have appeared by the vessel's log. By the log, the ship was navigated by her officers and crew, the same after the boarding as before, regular sights were taken, sea watches maintained, and sailing courses settled. The log entry at time of boarding was (R. p. 259):

Remarks Oct. 29, 1915, 6:59 (A. M.).  
 Stopped by British Cruiser in Lat. —, Long. —,  
 7:30. British officer boarded ship. 7:31 Eng.  
 (engines) half speed ahead. 7:35 Received  
 order from cruiser to proceed on our voyage.

The log entry shows no lookout during the watch at the time of stranding. The log indicates only a voyage under direction and control of master.

The log entries covering the stranding October 31, 1915, are (R. p. 254):

(A. M.) 6.30. Stopped engines.

6.40. c/c S. C. (corrected compass,  
 Standard Comp.).

S. 44 E. full speed.

6.50. Noup Head L. H. S. S. W.  
 Similar weather preceding.

9.07. Struck a reef in Westray Firth.

There is not the slightest reference that the young 22-year-old English lieutenant assumed charge of the

navigation or directed the course or was in any way responsible for the stranding of the vessel.

On November 2, 1915, the master under oath before the Receiver of Wrecks at Kirkwall, submitted the following report (R. p. 174):

That the said ship was bound for Copenhagen in Denmark via Kirkwall.

\* \* \* \* \*

That the said ship proceeded on the said intended voyage as above stated until she reached a point about 600 miles westward of the Orkney Islands, when she was boarded by a British naval prize crew on the morning of October 29th. Noup Head of Westray was made about four miles to northeast about 8 p. m. on the evening of the 30th. *Deponent decided to lie off land until daylight.* (Italics ours.)

That on Sunday, the 31st day of October, at 8 a. m., the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the Firth. *The vessel was holding a course South Magnetic which was considered safe by deponent and by the naval officer of the Prize Crew.* Vessel was proceeding at full speed, eight knots, when about half a mile southwest of the Skerries, which lie off Berskness Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result. \* \* \*

That, in deponent's opinion, the cause of the casualty was *a submerged and uncharted rock and it could not have been avoided.* (Italics ours.)

On November 13, 1915, an extended protest was made by the master before the American Consul which stated (R. p. 148):

The said ship proceeded on the said intended voyage as above stated until she reached a point about 400 miles westward of the Orkney Islands, when she was boarded by a British Naval Prize Crew on the morning of October 29th; Noup Head of Westray was made about 4 miles to northeast about 8 p. m.; on the evening of the 30th the master decided to lie off land until daylight; that on Sunday the 31st day of October, 1915, at 8 a. m. the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction, blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the firth. *The vessel was holding a course south magnetic, which was considered safe by the master and by the naval officer in charge of the prize crew.* The vessel was proceeding at full speed 8 knots. When about half a mile southwest of the Skerries which lie off Brest Ness, Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. \* \* \*

That in the master's opinion the cause of the casualty was *a submerged and uncharted rock and could not have been avoided.* (Italics ours.)

On October 26, 1916, the District Court for the Southern District of New York filed an opinion in the *Muller v. Globe & Rutgers Ins. Co.* case (unreported). On January 11, 1917, the assured filed proofs of loss, accompanied by copies of pleadings and decisions in the *Muller* case. The affidavit in support of the loss, dated December 30, 1916, makes the first written reference to the English lieutenant selecting courses or commanding the vessel. Supporting affidavit of the third officer, dated May 25, 1917, was filed, which is inconsistent with his testimony taken later. May 5, 1919, libel filed and on December 1, 1919, and June 19, 1920, the third officer and master were examined; the wheelsman was not called nor his absence accounted for, nor were the ship's work books and charts produced nor their absence accounted for. On August 5, 1920, the Government examined in London the five naval men who boarded the *Llama*.

The District Court (D. C. N. J., Lynch, D. J.) upon certain findings of fact determined the loss proximately resulted from perils covered by the war-risk policies upon the authority of *Muller v. Globe & Rutgers Fire Ins. Co.* (246 Fed. 759). Emphatically challenging the findings of fact made by the District Court, an appeal was taken by the Government to the Circuit Court of Appeals for the Third Circuit (Buffington, C. J., McKeehan, D. J., and Davis, C. J.). By a majority opinion



(Buffington, C. J., concurred in by McKeehan, D. J.) the court stated new findings of fact and determined the proximate cause of the loss was stranding (marine perils) contributed to by negligent navigation of ship's officers (marine perils). The specific finding is that the *Llama* was navigated by her own officers at the time of the stranding and was not being navigated by the British officer. (R. p. 183.)

The case is now on review by certiorari.

## II

### STATEMENT OF QUESTIONS INVOLVED

(1) Whether or not, where the proximate cause of the loss of the vessel is stranding (marine peril) caused by negligent navigation (marine peril), such loss must be characterized as a loss proximately resulting from marine perils and not from war perils.

(2) Whether or not, assuming assured is entitled to recover, which is denied, interest is payable upon the amount of the loss, and if so, from what date?

## III

### QUEEN INS. CO. v. GLOBE INS. CO. (263 U. S. 487)

Since the granting of the writ of certiorari, this court has filed an opinion in the case of *Queen Ins. Co. v. Globe Ins. Co.*, which we read to be decisive of the questions this case presents. The facts were (p. 491):

It will not be necessary to state the facts in detail. They are fully set forth in the decisions below, but those that are material to

our conclusion need but a few words. The *Napoli* sailed from New York for Genoa with a cargo of which a part was intended for the Italian Government and a small part was munitions of war. All of it was contraband. At Gibraltar she joined a convoy, as it was practically necessary to do, although not ordered by the military powers. The convoy sailed with screened lights, protected by British, Italian, and American war vessels, and navigated by an Italian commander on the *Napoli*, subject to the command of a British captain as the senior naval officer present. The route to be followed was ordered beforehand up to a point where instructions from Genoa were to be received but were not, as the convoy was ahead of the scheduled time. At about midnight July 4 another convoy similarly commanded met this one head on. It was seen only a very few minutes before the meeting; there was much confusion, and one of its vessels, the *Lamington*, a British steamship, struck the *Napoli* and sank her. As our judgment is based on broader grounds, we do not describe the movements bearing upon the nice question whether the navigation of the *Napoli* or the *Lamington* was in fault.

Mr. Justice Holmes, speaking for the court, said (pp. 492, 493):

On the other hand, the common understanding is that in construing these policies we are not to take broad views but generally are to

stop our inquiries with the cause nearest to the loss. This is a settled rule of construction, and, if it is understood, does not deserve much criticism, since theoretically at least the parties can shape their contract as they like. *Morgan v. United States* (14 Wall. 531) applied this rule beyond the limits of insurance to a charter party made during the Civil War, by which the United States assumed the war risks and the owners were to bear the marine risks. The boat carrying troops and stores was compelled to put to sea by the orders of a quartermaster given to meet what he thought the exigency of the service, although the danger was obvious and the master and pilot advised against it. This Court recognized the hardship of the owners' case, in view of the peremptory order to proceed to sea, but declined to look beyond the wind and waves that were the immediate cause of the loss. A similar decision was reached by the House of Lords after the late war in a case where the chartered vessel, the *Petersham*, was sailing without lights because of Admiralty regulations and collided with a Spanish vessel also without lights, and it was found that because of the absence of lights the collision could not have been avoided by reasonable care. (*British Steamship Co. v. The King*, (1921), 1 A. C. 99; affirming the decision of the Court of Appeal (1919), 2 K. B. 670. See *Morgan v. United States*, 5 Ct. Clms. 182, 194; *Reybold v. United States*, 5 Ct. Clms. 277, 283, 284.)

The same principle was applied to insurance, the special field of this narrow construction, in the case of the *Matiana* heard and decided with the *Petersham*, where a vessel was sailing under convoy and struck a reef without negligence on the part of the master or the naval officer in command of the escort. The discussion turned largely on the question whether the remoter causes of the collision and stranding were war-like operations, and from the tenor of the arguments on the one side and the other it may be doubted whether *Morgan v. United States* would not have been thought to go too far. But the *Matiana* certainly goes as far as the decision below in this case. There are special reasons for keeping in harmony with the marine insurance laws of England, the great field of this business, and as we could not reverse the decision below without overruling *Morgan v. United States*, we are of opinion that the decree of the Circuit Court of Appeals must be affirmed. We repeat that we are dealing not with general principles but only with the construction of an ancient form of words which always have been taken in a narrow sense, and in *Morgan v. United States* were construed to refer only to the nearest cause of loss, even when there were strong grounds for looking beyond it to military command.

We apply this decision to determine the proximate cause of the loss of the *Llama* to be a marine loss whether the facts as adopted by the District Court or by the Circuit Court of Appeals be applied.

## IV

**ARGUMENT****(1) BURDEN OF PROOF**

Loss by stranding at sea being a marine peril, the burden is on the petitioner (assured) to establish the loss falls on the War Risk underwriters. (*Britain S. S. Co. v. The King* (1921) 2 A. C. 99, 113, 119; *Munro Brice & Co. v. War Risk Ass'n.*, 34 L. R. 331.)

The Circuit Court of Appeals, after making very careful reviews of the facts, stated findings of facts which determined the loss a marine loss, and concluded that the petitioner had not sustained the burden of proving the loss a war risk one. As its opinion so carefully reviews the facts, we copy the opinion in full as an appendix, and adopt it as stating our review of the facts. We assume this opinion will be adopted by this court as its statement of facts. A careful examination of the record reaffirms these facts. The rule announced in *Queen Ins. Co. v. Globe Ins. Co.*, *supra*, determines the loss a marine one.

**(2) PROXIMATE CAUSES OF LLAMA'S LOSS MARINE PERILS**

Admittedly, the *Llama* was lost by stranding (an ordinary marine peril) which was brought about by errors in navigation (also ordinary marine perils). The errors in navigation include failure to keep a proper lookout—the *Llama* had no lookout; failure to take sights or accurate sights; failure to check up sailing courses; failure to take a safe course; failure to take precaution to avoid stranding

when the breakers were apparent. There was negligent navigation in other respects.

The assured reasons the boarding of the vessel constituted the war peril of capture or seizure and caused the marine perils of navigation which in turn caused the marine peril of stranding. The reasoning is not merely that the cause of the cause of the proximate cause of the loss was a war peril, but that the remote boarding itself was the proximate cause of the stranding.

The necessity of taking on board an armed guard and of stopping at Kirkwall was foreseen by Libellant. It was a matter of arrangement by the assured with the British authorities and the policy provided for deviation to "port of call." The typewritten rider to the policy relieves the insurer from liability by reason thereof:

Warranted that the goods are destined for the country of the port to which they are insured and *free of claim consequent upon or arising* from their ultimate destination being a country of a belligerent. (R. p. 260.)

The stranding resulted directly from errors in navigation as distinguished from a deliberate attempt to beach the vessel for a military purpose to be gained by a destruction of the vessel, such as to obstruct a channel or to land troops. The proximate cause was a sea peril—stranding—; the secondary cause errors of navigation—sea perils; the remotest cause is said to be boarding by British officers. If the proximate cause of the loss is sea peril—risks not

insured against, our inquiry is at an end—we do not look for the cause of the peril.

It is well settled that when an error in navigation or the negligence of the officer, (irrespective of whether or not he is the agent of the shipowner) in charge of the navigation of the vessel has directly caused the stranding and loss, the proximate cause is not the error in navigation or the negligence, but the sea peril of stranding or shipwreck.

The following analysis of the decisions shows that in cases where a marine peril is a cause immediately preceding or next (proximate) to the disaster (or is the last in the series of causes or chains of causation), the proximate cause is the sea peril. The United States Supreme Court and other courts have invariably held that the *marine peril* was the “proximate cause” of the loss, notwithstanding other perils or causes (mere *causae causans*) may have caused the vessel to become subject to the marine peril.

Case at bar—*Llama*: (1) Seizure—war peril—caused (2) error in navigation—marine peril—caused (3) stranding—marine peril. Proximate cause was (3) stranding.

(1) *Queen Ins. Co. v. Globe Ins. Co.* (263 U. S. 487): (1) Order of convoy commander required vessel to proceed on definite course, which (2) contributed to collision (marine peril). Held proximate cause (2) collision marine peril.

(2) *Morgan v. United States* (61 U. S.; 14 Wall. 531): (1) Military order of United States Army officer against protest of master and of United States

Government pilot in charge—war peril—caused (2) stranding—marine peril. Held proximate cause was (2) stranding.

(3) *Leary v. United States* (81 U. S.; 14 Wall. 607): (1) Military order of United States Army officer—war peril or extraordinary marine peril—caused (2) stranding—ordinary marine peril. Held proximate cause was (2) stranding.

(4) *Reybold v. United States* (82 U. S.; 15 Wall. 202): (1) Military order of United States Army officer—war peril—caused (2) shipwreck in ice floe—marine peril. Held proximate cause was (2) shipwreck—marine peril.

(5) *John A. Donald v. United States* (39 U. S. Court of Claims, 357): (1) Military order of United States Army officer—war peril—caused (2) stranding—marine peril. Held proximate cause was (2) stranding.

(6) *Hagemeyer Trading Company v. St. Paul Marine Insurance Company* (266 Fed. 14; C. C. A. 2nd Circuit, 1920): (1) Negligence of British prize crew caused (2) fire. Held proximate cause was (2) fire.

(7) *Insurance Company v. Transportation Company* (12 Wall. 194, 199): (1) Collision—caused (2) fire. Held proximate cause was (2) fire.

(8) *American-Hawaiian Steamship Company v. Bennett* (207 Fed. 510, 514; C. C. A., 9th Circuit): (1) Error in navigation caused (2) stranding. Held proximate cause was (2) stranding.



The English decisions apply the same rule:

(1) *The Matiana*—House of Lords—England (1921, 1 A. C. 99): (1) Military order permitting no discretion of master of vessel—war peril, caused (2) stranding—marine peril. Held proximate cause was (2) stranding.

(2) *The Petersham*—House of Lords—England (1921, 1 A. C. 99): (1) Military order permitting no discretion of master of vessel—war peril, caused (2) collision—marine peril. Held proximate cause was (2) collision.

(3) *Trinder, Anderson & Company v. Thames & Mersey Insurance Company* (1898, 2 Q. B. 114, 123): (1) Negligent navigation by officer not an agent of shipowner caused (2) stranding. Held proximate cause was (2) stranding—marine peril.

In *Morgan v. United States*, 81 U. S. 531 (more fully reported 8 Ct. of Claims, 18), the owners of a vessel let her to the Government in time of war—they officered and manning her and agreeing to keep her in repair and fit for the service in which she was engaged—and they to take the marine risks but the Government the war risks. The court held that a stranding of the vessel incurred by her attempt to cross a bar in charge of a Government pilot, upon an order of the quartermaster of the United States Army, when the wind was high and the water low—the quartermaster having seen the vessel strike on a previous attempt to cross and had given the present, a second, order with a full knowledge of the danger of crossing, against the judgment

of both the master and pilot, because the exigencies of the military service; in his judgment, required the attempt to be made—was to be regarded as a marine risk and not a war risk and that the owners and not the Government should bear the loss.

Mr. Justice Davis, delivering the opinion of the Supreme Court, said (14 Wall. 584, 535):

In the condition of things then existing, it became necessary to make provision for two classes of perils. This was done; the United States assuming the war risk, while the owners of the boat agreed to bear the marine risk. If, therefore, the stranding of the boat in going over the bar was owing to a peril of the sea, her owners, and not the Government, must bear the loss. That the high wind and low stage of water were the efficient agents in producing this disaster are too plain for controversy. They were the proximate causes of it, and in obedience to the rule "*causa proxima non remota spectatur*" we can not proceed further in order to find out whether the fact of war did not create the exigency which compelled the employment of the vessel. If it did, it was known to the owners when the charter party was formed, who, with this knowledge, became their own insurers against the usual sea risks, and must abide the consequences of their stipulation.

There is a certain degree of hardship in this case growing out of the peremptory order of the quartermaster to proceed to sea, but this is outside of the contract, and, if worthy

of being considered at all, must be addressed to another department of the Government.

In *Leary v. United States*, 81 U. S. (14 Wall. 607), the owners of a vessel chartered her to the Government for the purpose of plying in the harbor of Port Royal in South Carolina or for such other service as the Government might designate. It was stipulated that in case the vessel, while executing the orders of the Government, should be destroyed or damaged, or by being compelled by the Government to run any extraordinary marine risk, the owners should be indemnified. In complying with the orders of the harbor master of the United States Army in Port Royal, the vessel struck upon the fluke of a sunken anchor in the harbor and was sunk. The court held that the risk which the vessel thus incurred was not an extraordinary marine risk, but was an ordinary risk which every vessel runs that enters a harbor and which every marine policy covers.

In the statement of the case it is said (pages 608, 609):

While under charter, the vessel was lying at one of the wharves in the harbor of Port Royal. On the 12th of May, 1863, the military harbor master ordered her out to make room for another steamer. The captain of the *Mattano* objected to going out, as the tide was very low; and, as he believed, there was a considerable breeze from an unfavorable quarter. The harbor master ordered the *Mattano* peremptorily to back out, and her captain let go his lines and did so. In thus backing out

she struck upon the fluke of a sunken anchor imbedded in the sand, and sunk in fifteen minutes.

This anchor, against whose fluke the vessel struck, was a mooring anchor and had been placed where it was by the United States quartermaster, to moor big ocean steamers prior to November, 1862, and had a buoy attached to it which showed its position; but, about the first of January, 1863, the buoy had gone adrift in a gale of wind, and had never been replaced, and there was nothing at the time of the accident to warn vessels of the position of the sunken anchor. No one could have pointed out where the anchor was at that time. The captain of the *Mattano* knew of the existence of the anchor, but thought he was a long way outside of it. There was no unskillfulness in executing the order to back out \* \* \*.

On this case the Court of Claims decided that the disaster was a usual marine disaster, such as was covered by ordinary marine policies of insurance, and not such extraordinary marine risk as was contemplated in the charter party; and that if the owners neglected to protect themselves against such perils by insurance they would have to bear the loss. The court accordingly dismissed the petition, and hence the appeal to this court.

Mr. Justice Field, delivering the opinion of the Supreme Court, said (14 Wall. 612, 613):

The second ground presented by the appellants for a reversal of the decree is readily

answered. The risk that the vessel incurred in complying with the orders of the harbor-master was not an extraordinary marine risk within the meaning of the charter party. The term extraordinary is there used to distinguish an unusual risk which the vessel might be compelled to run by order of the Government, from those risks which would be covered by an ordinary marine policy and which might be expected to arise from the service in which the vessel was engaged. The contract of the Government was not intended to apply to the usual risks attendant upon the performance of a service such as was here mentioned, but risks outside and beyond them.

The risk incurred was of a possible collision with a sunken anchor in the harbor. This was an ordinary risk which every vessel must run that enters a harbor and is one which every marine policy covers.

In *Reybold v. United States* (82 U. S.; 15 Wall. 202), the Government chartered a vessel during the War of the Rebellion, the owners agreeing to keep her "tight, staunch, strong, well manned," etc., and to bear the marine risks; the war risks to be borne by the Government. After entry of the vessel on the charter party, she being then in the Potomac River at Washington and the navigation considerably obstructed by ice, the quartermaster of the United States Army ordered the captain of the vessel to receive certain men and horses and to proceed on the next morning out of the river to City Point. The captain made no objection to the order because, as he

testified, "he considered it imperative as a military order and as such obeyed it, though if he had considered that he could have used his judgment he would not have left the wharf, as he did not consider it safe." Having accordingly received the men and horses he set off. In going down the river, the vessel, though "tight, staunch, strong, well manned," etc., was wrecked by the ice. The Supreme Court held that the risk was a marine risk—not one of war; and that though the acquiescence of the master deprived the act of the quartermaster of being a tortious act, no recovery could be had in the Court of Claims.

Counsel for the shipowner argued (p. 205):

In the present case the order of the quartermaster \* \* \* defined and specified the time for the commencement of the voyage. The departure of the vessel at that time, in face of apparent danger, was an unskillful and negligent act of navigation, for which the United States and not the owners are responsible. The order of the quartermaster was a military order, issued by a military officer of the United States acting in discharge of his official duty in time of war. Obedience to it could not be refused. \* \* \* It can not be said that the master acquiesced, in the proper sense of the word, in the order given. His opinion was not asked, nor was he consulted in regard to the dangers to be encountered in making the voyage. \* \* \* The voyage was not made the subject of negotiation or consultation between him and the quartermaster. The order was given and

received and obeyed, as a military order simply, imperative in its terms and admitting no question.

Mr. Justice Davis, delivering the opinion of the Supreme Court said (15 Wall. 206, 208):

This case is in only one particular different from that of *Morgan v. United States*, decided at the last term. Both were contracts of affreightment, with stipulations that the United States should bear the war risk and the owners the marine risk. \* \* \* In each case the loss sued for was occasioned by the perils of the sea, and in both the effort has been, notwithstanding the express terms of the contract that the owners were their own insurers against such risks, to shift the responsibility upon the United States.

It was insisted in Morgan's case that the owners were relieved and the government chargeable, because the master was compelled to proceed to sea by the peremptory order of the quartermaster, when, in his judgment, expressed to that officer, the state of the wind and tide rendered it hazardous to do so, but we held, as in several previous cases, that if this was so, it was outside of the contract—a tortious act of the officer—and, therefore, not within the jurisdiction of the Court of Claims.

In the present case the master made no objection to the order requiring him to proceed on his voyage, and this constitutes the only difference between the two cases. This difference, however, instead of helping the cause of the claimant, makes the justice of the defence still clearer. It was the business of the

master to know whether the navigation of the river was dangerous or not and, naturally, he would be better informed on such a subject than a quartermaster of the United States. How are we to know, in the absence of proof, that the order would have been given, or, if given, not withdrawn, had the master stated that in his opinion, in the state of the river, it was unsafe to attempt to make the voyage? Why not speak of the danger when he told the quartermaster, in reply to an inquiry on the subject, prior to the order being given, that his vessel was sheathed with iron and had capacity to take the men and horses to City Point? This was the time to have spoken as the object of the inquiry was plainly to ascertain whether or not the boat, if she had the requisite capacity, was in a condition to withstand the masses of ice which were floating in the channel of the river. It is very clear that, upon the information which was given, in the absence of any objection to the proposed voyage, the officer of the government had the right to suppose, in the judgment of the master, it could be safely undertaken. It is no excuse to say that the master at the time knew it was unsafe to leave the wharf, but said nothing because he considered the order a military one, and as such, to be obeyed.

In *Insurance Company v. Transportation Company* (12 Wall. 194, 199) Mr. Justice Strong, delivering the opinion of the Supreme Court, said:

There is, undoubtedly, difficulty, in many cases, attending the application of the maxim,



“proxima causa, non remota spectatur,” but none when the causes succeed each other in order of time. In such cases the rule is plain. When one of several successive causes is sufficient to produce the effect (for example, to cause a loss), the law will never regard an antecedent cause of that cause, or the “causa causans.” In such a case there is no doubt which cause is the proximate cause within the meaning of the maxim. . . .

It is true, as argued, that as the insurance in this case was only against fire, the assured must be regarded as having taken the risk of collision, and it is also true that the collision caused the fire, but it is well settled that when an efficient cause nearest the loss is a peril expressly insured against, the insurer is not to be relieved from responsibility by his showing that the property was brought within that peril by a cause not mentioned in the contract.

In *General Mutual Insurance Company v. Sherwood*, 14 How. 361, 366, Mr. Justice Curtis, delivering the opinion of the Supreme Court, said:

When a peril of the sea is the proximate cause of a loss, the negligence which caused that peril is not inquired into. . . . In applying this maxim (*causa proxima, non remota, spectatur*) in looking for the proximate cause of the loss, if it is found to be a peril of the sea, we inquire no further; we do not look for the cause of that peril.

The controlling English authority is the *Matiana* (House of Lords L. R. 1 A. C. 99, 1921), affirming the unanimous decision of the Courts of Appeals,

reported under name of *British India Steam Navigation Company v. Green et al.*, L. R. 2 K. B. (1919) p. 670—reversing *Bailhache, J.* (1919) 1 K. B. 632. The *Matiana* was lost by stranding at night while following the set course laid down by the Convoy commander. The proximate cause of the loss was held to be the marine peril of stranding.

Lord Sumner said:

As for *The Matiana*, she was sailing with convoy. She was bound to take her course from the senior officer of the convoy and did so, and, thanks to the set of a variable current, she came unexpectedly on to the Keith Reef. Her operation also was proceeding on her trading voyage. It is true she did so by an unusual route, but the deviation was justifiable and obligatory. She found in her way a rock, submerged and unlighted, which, in itself, was a marine peril. It was a moonlight night, and if there had been any wind she would probably have seen the break of the sea on the reef in time. As it was a still night she had no warning and she stranded. Why is such a stranding a consequence of warlike operations? *The Matiana* had to do as she was told, but she was not told to go aground either directly or indirectly. I think that the case of *The Matiana* can only be distinguished from that of *The Petersham* by dwelling on the facts, first, that she was in convoy, and, second, that, in addition to general orders as to not exhibiting lights, she was under particular orders as to the course to be shaped and the stations to be kept. In brief, sailing in convoy is only

sailing in company and is no more a warlike operation than sailing alone. If, for the sake of protection in case of danger, *The Matiana* had kept as close as she could to a King's ship casually encountered, she would still have been peacefully occupied. What difference is made by additional orders given ad hoc by the senior naval officer? It is suggested that the case is the same as if he had been on her bridge, had himself laid and directed her course, and had her steered straight on to the reef. Even if it were so, I am by no means prepared to say that this would have sufficed.

Not everything done by a King's ship or a King's officer, in time of war is necessarily a warlike operation or the consequence thereof. \* \* \* It is not a case of deliberately running her aground for some purpose of war. Her course and station having been prescribed some hours before, she was in her own officer's charge, and there is no evidence to show or to suggest that the avoidance of a local obstacle in her track was not left to them, or that her orders were to keep her course, let the consequence be what it might. There is nothing to suggest that, if the rock had been visible, she was not entitled and bound to maneuver so as to avoid it. Her officers were not to blame, for they could not see it, but her inability to see the rocks seems to me to be indistinguishable from the *Petersham's* inability to see the *Serra*; there was nothing warlike about it—the peril of it was of the seas. For the rest, an order given by an officer in company and in authority referring

to a compass course does not really differ from an order given generally in Admiralty Regulations; it is a special order, but it is an order to do or to refrain, like the general order as to lights. Warlike operations and hostilities generally prevailing supplied the reason for it, but even if it was a consequence of an operation of war the stranding was not its proximate consequence.

Lord Atkinson said:

The duties and proper tasks of convoying warships and the ships they convoy are respectively indicated in ss. 30 and 31 of the Naval Discipline Act of 1866 (29 & 30 Vict. c. 109). The naval officers are to diligently perform the duties of convoying and protecting the ships they are appointed to convoy according to instructions, to defend these ships and the goods they carry without deviation, to fight in their defence if they are assailed and not to abandon them or expose them to hazard. Every master or other officer in command of any merchant or other vessel convoyed is bound to obey the commanding officer of the ships of war in all matters relating to the navigation of security of convoy, and is also bound to take such precautions for avoiding the enemy as may be directed by this commanding officer. It does not appear, however, that this latter officer has any power to require the master, officers, or crew of any merchant ship which is being convoyed to take combative action against a vessel of any kind, or to join in such action

if taken by all or any of the ships of war. The rôles of the two classes of ships are entirely different in nature and character. That of the ships of war is protective and if need be combative; that of the merchantmen is not at all combative; and as far as the circumstances permit is as peaceful in nature and character as would be their enterprises in time of peace.

If this latter be the correct view, as I think it is, then in order that the underwriters of the war risk policy may be made liable, the "war-like operation" which is the proximate cause of the loss of the *Matiana* must have been something which was done by the attendant warships or their officers. The loss of a ship by striking or grounding on rocks is, as I have said, *prima facie* a marine risk. The burden of proving that it is, in this case, a war risk rests upon the owners of the *Matiana*, or on the underwriters under the marine policy. \* \* \*

(Quoting Warrington, L. J.): "There was no evidence that the naval officer's order to change the course was given in consequence of information that a submarine was in the neighborhood, in fact the contrary would appear to be the case, for the change had been arranged some hours before, the moment of the change only being left to be decided." He adds that the course prescribed was ordered, not for the purpose of avoiding or resisting attack by a particular enemy, whose presence was known, but as part of a series of precautionary measures taken for the safety of these merchant ships in waters in which

enemy craft might not improbably be encountered.

Applying the principles announced by these decisions, the proximate cause of the loss of the *Llama* was stranding (marine peril). The stranding was caused by errors of navigation on part of ship's officers (also marine peril). The earlier boarding of the *Llama* is suggested as a related cause. The loss having been caused by perils of the sea, we inquire no further, we do not look for the cause of that peril.

The Circuit of Appeals for the Second Circuit in its opinion in *Muller v. Globe & Rutgers Fire Ins. Co.* (246 Fed. 759), upon authority of which the District Court held the loss a war risk loss, based its conclusions upon its findings of proximate cause. As we read the decisions of the House of Lords in the *Petersham* and *Matiana* cases and the decision of this court in *Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co.* the loss must be declared a marine loss.

The same principles and rulings of proximate cause must be applied whether the war risk loss has relation to the "hostilities" or to the "seizure or detainment" clauses of the war risk policy.

We reaffirm that upon the findings as made by the Circuit Court of Appeals the loss of the *Llama* must be determined a marine loss. And even upon the findings as made by the District Court, applying the rulings made in the English cases and the *Queen Ins. Co.* case cited, the loss must be determined a marine risk loss.

**3. THE STRANDING (MARINE LOSS) BROUGHT ABOUT BY  
ERRORS OF NAVIGATION OF SHIP OFFICERS AND  
CREW**

The review of facts as made by the petitioner for the most part relates to the statements made by the district court. The government emphatically challenged the correctness of such findings in the Circuit Court of Appeals, and does so now, if this court should determine to review the full evidence and restate the facts.

The accident occurred in broad daylight, under best conditions of sea and wind, while the vessel was proceeding through a fairway four miles in width, by stranding upon a reef to the westernmost edge of the fairway. By reference to the Pilot instructions to navigation, anyone would avoid these obstructions by lining up landmarks, over the ship stern and keeping just a little to the east of such line-up. Failure to do so is clearly error of navigation.

The tanker did not maintain a lookout, although the vessel was proceeding through the Firth. Had such lookout been maintained the breakers ahead may have been noticed before they were and proper steps taken by the ship officers to avoid the disaster.

The master of the *Llama* at all times remained in control of his vessel. The tanker was navigated by the ship officers and crew, upon courses which the master plotted and determined. The history of the voyage, by the vessel's log continued after the boarding as before.

The boarding did not affect the routing of the vessel. She was bound to Kirkwall, by previous arrangement between owners and the British Government. The sailing directions given by the cruiser "to keep north of Scule Skerry and North Roma" did not change any routing; the vessel would have passed these landmarks as her master planned. Up until the time the tanker reached Noup Head (R. p. 52) the master admits selecting and plotting the courses. Noup Head is the beginning of the passage between the islands to which the order "not to pass between the islands at night" related. The vessel did lay off Noup Head during the night (R. p. 53), so that when the ship was put under way on the morning of the stranding, all the sailing directions given by the cruiser had been complied with. All sailing orders were passed by the master to the ship officers and crew. The night order book was prepared by the master and in his handwriting (R. p. 29).

The exact testimony of what happened from the time the young lieutenant, 22 years of age, boarded the vessel up to the disaster, appears by Record, pp. 98-115. Certainly, until the *Llama* arrived at Noup Head, the *master set the course*, first laying it off on the chart. The lieutenant testified (p. 66):

I asked him if he would navigate the ship, to which he replied that he would. The captain then laid off the course as near as I can remember to Noup Head; and then he gave the order to—asked me, rather, if he could proceed; so I said, "Yes"; and he gave the order "Full speed ahead," and set the course.



Q. Who laid off the course on the chart?—

A. The captain.

Q. Who gave the directions for setting it?—

A. The captain.

Q. State whether or not you took any part whatever in the navigation of the ship on that course.

Mr. SYMMERS. Objected to as a statement of a conclusion.

Q. (Mr. Staley). Answer the question.

A. I took no part in laying the course off; the only part I took was in looking after it afterwards to see that it complied with my orders from the captain.

Q. And that was what?—A. That was to pass to the northward of North Rona and Scule Skerry. The course did that and so I never mentioned it again.

*This would be confirmed by the production of the original chart and work book. They were not produced, nor their absence accounted for. If any facts were to the contrary, the log, protest, or report of the wreck would have stated it.*

Again (p. 67):

Q. (Mr. Staley). Now, as I understand it, the master laid the course towards Noup Head?—A. Yes.

Q. And the ship was set on that course?—

A. Yes.

Q. What happened after that so far as the navigation of the ship was concerned or the laying down of courses, or discussions, or what not?—A. The captain laid all courses down and he always informed me what he had done.

Q. During the time who was actually on the bridge as officer in charge?—A. The captain.

Q. He would not be there constantly?—A. Or one of the ship's officers.

Q. And who was at the wheel?—A. One of the ship's crew.

Q. Did your men attend the wheel at all at any time?—A. No, never.

Q. The course was set towards Noup Head, when was it changed about, and what was the occasion for the change, if any?—A. We made no change of course until we sighted Noup Head to the best of my recollection,\* and then it was only to dodge around or what they call heave to until the morning.

This practically confirms all the other testimony relating to the course to Noup Head.

There is a conflict in the testimony as to the selection of the course after Noup Head was reached. The lieutenant testified (R. pp. 68, 69):

Q. Did you know what day he sighted Noup Head, assuming that you boarded her on the 29th October as the master states?—A. Sighted Noup Head on the 30th.

Q. What time of day?—A. Well, on the afternoon.

Q. Did you go in past Noup Head that night, or did you lay off during the night?—A. Oh, no; we lay off well clear of the land.

Q. Was there any conversation between yourself and the master of the *Llama* as to the course you should take from Noup Head to Kirkwall?—A. Yes.

Q. When was that, and state exactly what the conversation was?—A. That was during this evening; I can not remember the time, but it was after we have hove to; the captain of the *Llama* came to me and said could he go through the Westray Firth. \* \* \* I replied to him that I did not know the Westray Firth, having never been through it before. He said: "Oh, that is all right, I have been through; I went through on my last trip." I said: "If you know the passage, captain, you can make it as far as the Government is concerned."

Q. Was there any discussion at that time about any other passage?—A. He mentioned that it was more preferable than the Fair Island passage.

Q. State whether or not you previously had used this Fair Island passage.—A. I personally have always used the Fair Island passage before, not knowing the coast too well.

Q. And do I understand you to say that prior to that time you had never been through the Westray Firth to Kirkwall?—A. No; I had never been through at that time.

Q. Have you ever taken a ship through subsequently?—A. No; I have never taken a ship through subsequently.

Again (R. p. 63):

Q. Who laid the course on the chart?—A. The captain.

Q. Who gave the directions as to the course to follow?—A. The captain.

Q. Did you hear him give the directions?—

A. I can not say that I did hear him give them.

Q. Did you give any directions at any time?—A. No; I gave no directions.

Q. At any time?—A. No.

Q. Please state in sequence just exactly what happened so far as you observed it after you came out from breakfast.—A. I came out from breakfast and I went straight out on the bridge; I had a look around and then went into the chart room where the captain was, and he showed me the position of the ship. I had a few words with him about what he was steering.

Q. Do you recall exactly what was said?—

A. I can not recall what he said, but he just gave me to understand that he was going through Westray Firth.

Mr. SYMMERS. I object to this unless this witness can recall the language or approximately the language of the captain.

A. And then I went out on the bridge again and saw breakers on the port bow.

Q. How much on the port bow?—A. I should say about a point or half a point.

Q. And how far distant about?—A. One to two miles, I should think.

Q. Go on.—A. I then went into the chart room again and told him what I had seen, and suggested that he had better take steps to clear it, which he immediately went out and did.

Q. Who was in charge of the bridge at the time?—A. One of the ship's officers.

Q. Was he standing right there on the bridge?—A. He was on the bridge at the time.

Q. Did you say anything to him?—A. Never spoke to him.

Q. Only spoke to the master?—A. Only spoke to the master.

Q. Did you ever speak to the man at the wheel?—A. Never.

Q. What happened after that?—A. The captain altered his course about four points, I think. Then very soon after that we struck.

Q. Where did you strike?—A. On the bow.

Again, page 70—

Q. (Mr. Staley). So that I may have it definitely on the record, who laid down all the courses after you had passed North Rona and the Scule Skerries?—A. The captain.

Q. You mean the captain of the *Llama*?—A. Yes; the captain of the *Llama*.

Q. Who actually plotted them on the chart?—A. The captain of the *Llama*.

Q. State whether or not at any time you gave any directions of any kind whatever either to the officer in charge of the bridge or the quartermaster on the *Llama*?—A. At no time did I ever give any orders to the crew of the *Llama*.

Q. Or to any of the officers in charge of the bridge?—A. Yes.

Q. Is that correct?—A. That is correct.

Q. At the time you struck was there any doubt as to your striking a rock or obstruction?—A. Not in my mind.

The only testimony which suggests the lieutenant selected the course through Westray Firth is the unsupported evidence of the master. All documents, where such fact would be recorded, log protest-examination before Receiver of Wrecks are silent.

In order to avoid any misunderstanding of the testimony of Jensen, which is reviewed by the petitioner (p. 30), we review his testimony on cross-examination:

Q. What are you able to say that passed between them?—A. I am able to say a conversation passed between them.

Q. You don't know what was said?—A. I don't know what was said; no, sir.

Q. On direct examination this morning you have said that the British officer gave some information to the man at your wheel?—A. Yes, sir.

Q. Did he give him an order?—A. He didn't give him an order, but he emphasized the order that I had already issued.

Later on, he attempted to testify what was said, but in view of this examination little weight can be given to the same.

Jensen said, cross-examination (R. p. 30):

Q. I believe I understood you to say that when this highland was sighted, the British officer told the man at the wheel to steer for that?—A. He pointed to the land and told him to steer.

Q. Do you recall his language?—A. No; I was probably three feet away.

Q. Did you hear him say to the man, "steer for that highland"?—A. I heard him speak to the man at the wheel and direct with his hands, steer for that.

Q. *Did you hear what he said?*—A. No.

Q. *You don't know what he said?*—A. No; but—

Q. *You don't know what he said to the man at the wheel?*—A. No; I didn't hear.

Cunningham, one of the guard, called the third officer's attention to breakers when the vessel was two or three miles distant. (P. 87.) The third officer admits seeing breakers ahead and not reporting them to the master, although he says he told the lieutenant. (R. p. 31.) His duty was to report to the master—again negligence on part of ship's officer.

Assuming the lieutenant did plot the course, which no one contends he did, the duty still rested upon the master to check up the positions and sailing courses, as representing the owner. Had the master done so, there would have been no difficulty in determining the proper sailing course. Failure to do so again is negligent navigation on part of the master in the performance of the duties he owed his owner.

#### 4. MULLER v. THE INSURANCE CO. (246 FED. 759).

The facts in the *Muller case* were that the *Canadia* when seized was told to go by the passage between the islands by night with the aids to navigation destroyed or removed against the protest of the master. While proceeding by dead reckoning and

soundings—at night—the vessel stranded. The master was compelled to attempt the passage against his protest. The Circuit Court of Appeals applied the doctrine of proximate cause and reached the conclusion the loss a war risk one, adopting the facts and reasoning of the English Courts in *British Co. v. The King*, 33 L. T. R. 520. If the court had had before it the *Matiana*, *Petersham*, and the *Napoli* cases (*supra*), we believe the court should have reached a different conclusion. In *British Co. v. King*, the war risk underwriters admitted there had been no negligence intervening causing the collision. The distinct rule there was announced (at p. 522) that if the collision had been caused by the negligence of those in charge of the vessel, the loss would have been declared a marine loss. These distinctions are noticed in the latter cases of the *Petersham* and the *Matiana* (*supra*).

The facts in this case are different. The stranding was in daytime, while the vessel was upon her course suggested by and laid by her master. The master made no protest. The stranding on charted rocks could only have resulted through negligent navigation. If the stranding itself is not the proximate cause, negligent navigation causing such stranding was the proximate cause. It was negligence, subsequent to the boarding, which intervened and caused stranding. The facts distinguish the cases. We believe under the rulings in the *Matiana*, *Petersham* and *Napoli* decisions (*supra*) decided since the Muller case, the loss of the *Canadia* must be declared a marine loss.



## 5. THE SEIZURE AND DETAINMENT CLAUSES

The rule of proximate cause must determine whether the loss here is a marine loss or war risk loss.

The petitioner suggests (B. p. 22) that under the "well-settled law," the "seizure, restraint, and detainment" are regarded the proximate causes of the loss, if, before being delivered from those perils, the vessel is lost for any reason and not returned to her owners. We deny the application of the rule stated as applicable to this case. We review the cases cited.

In *Cory & Sons v. Burr*, 8 A. C. 393 (1883), the vessel was seized by a Spanish revenue officer and taken into Cadiz for smuggling tobacco into Spain contrary to law. The assured incurred expenses in resisting proceedings for the condemnation of the ship and was compelled to pay a sum of money in order to procure her restoration. The action was brought to recover such moneys from the underwriters. There was no loss from a marine risk. The policy warranted "free from capture and seizure." The court determined the loss related to the capture and seizure and not to the barratry of the master, which was the substantial question of law presented. The court said:

It was taken forcible possession of, and that not for a temporary purpose, not as incident to a civil remedy or the enforcement of a civil right, not as security for the performance of some duty or obligation by the owners of the ship, but it was carried into effect in order to obtain a sentence of condemnation and confiscation of the ship.

In *Magoun v. New England Marine Ins. Co.*, 1 Story 157, while the schooner with cargo was in the harbor, the vessel was seized and forcibly taken possession of by the local authorities on account of the master engaging in a supposed illicit and prohibited trade. The master was arrested and imprisoned. During the period of the vessel's detention, the vessel deteriorated and she could not be put in a seaworthy condition except at a sum in excess of her value. The court ultimately determined the vessel not subject to seizure and she was released. The owners abandoned the vessel to underwriters who refused to accept same and action was brought on the policy. There was no loss by perils of the seas (p. 164).

Whatever loss happened was from restraint and detainment. The court held owners were entitled to declare an abandonment to the underwriters and to recover for a total loss.

In *Goff v. Withers*, 2 Burr 683, the vessel was taken by the French, and her master, mates, and all the sailors removed and carried to France. Eight days later the vessel was retaken by the British. Much later, after recapture, the vessel was disabled and required cargo to be jettisoned. Owners had offered an abandonment upon the capture. The substantial question presented was the right of the owner to declare for an abandonment by reason of the original capture, although the vessel later may be recaptured and in a position to be restored to owners. The facts were held to entitle the owner to abandon his vessel

by the capture, and such right was not affected by the vessel subsequently being recaptured.

In *Anderson v. Martin*, 1908 A. C. 337, when the Japanese prize officer boarded the vessel *he announced that the ship was captured for carrying contraband. He assumed control of the vessel* and took her into a port other than destination. The vessel was condemned. The act itself constituted a capture and then entitled owners to declare an abandonment as a total loss to underwriters.

To have the rules announced in these cases applied, the act of the British lieutenant would have to be construed to have been such a seizure or capture of the *Llama* as would then have entitled the owners to abandon the same as a constructive total loss. No such claim ever has been made. The purpose of the officer remaining on the vessel was to see that she did what owners previously had arranged the vessel would do, namely, put into Kirkwall for examination of documents. The vessel continued upon the course selected by her master and under his navigation, subject to the most general direction as to the general course to pursue and which directions had been complied with previous to the stranding. The case can not present the question of right of abandonment through boarding by the British officer upon the theory that such act amounted to a capture which entitled the vessel to be condemned. The owner at all times retained possession of his vessel. The doctrine of proximate cause must determine the

issues of the case. The intervening negligence of ship's officers in the navigation of the ship (marine peril), brought about the stranding by which the vessel was lost (marine peril). Any capture, seizure, or detainment was a prior act and not proximately related to the disaster.

## V

### THE QUESTION OF INTEREST

By the decree entered in the District Court, the principal sum awarded totaled \$161,947.16, with interest from October 31, 1915, to the entry of the final decree, which amounted to \$57,944.64. The final decree (erroneously as suggested) further allows interest on the aggregate sum (principal and interest) from the date of the decree until paid. The act conferring jurisdiction upon the District Courts sitting in admiralty over this litigation is silent upon any allowance of interest and there is no stipulation in the policy providing for the payment of interest. The appeal to the Circuit Court of Appeals raised the question as to the allowance of interest under the usual theory that in the absence of agreement or legislation, interest can not be recovered against the Government.

If interest is payable, as the claim is one in admiralty and the libel was not filed until three and one-half years after the loss, the question of allowance of any interest is within the discretion of the court. The clause in the policy provides (R. p. 10):

Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

The preliminary proofs were filed January 11, 1917, and supplemental affidavits filed bear date September 17, 1917. In any view, interest does not begin to run until after September 17, 1917.

The further question is what rate of interest shall be applied. The District Court allowed 6 per cent. Under the Court of Claims and the Tucker Acts admiralty jurisdiction is conferred upon the courts, but interest is at the rate of 4 per cent only from the date of the judgment.

## VI

### CONCLUSIONS

It is respectfully submitted the decree of the Circuit Court of Appeals for the Third Circuit should be affirmed and the case remanded to the District Court with directions to dismiss the libel.

JAMES M. BECK,  
*Solicitor General.*

J. FRANK STALEY,  
*Special Assistant to the  
Attorney General, In Admiralty.*

## APPENDIX

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We adopt the facts found by the opinion of Buffington, Circuit Judge, as the fair statement of the facts. (Record, p. 178.)

In the Court below, the Standard Oil Company of New Jersey, in pursuance of authorizing legislation, filed a libel against the United States War Risk Insurance Bureau on two policies of war risk insurance on its steamship *Llama*. On final hearing, that Court entered a decree adjudging the insurer liable for the loss of the steamer and from it the insurer took this appeal.

Inquiring as to the question involved in this case, we note that as the owners of the *Llama* assumed all marine risks and as she was lost by stranding, a marine peril, and as such stranding was caused by errors in navigations, also a marine peril, the question involved is whether the insured has shown that the proximate cause of the loss was not these marine perils or errors in navigation and stranding but was a war peril insured against, namely, "takings at sea, arrest, restraints and detainments of all Kings, princes and peoples, of what nation, condition or quality soever, and all consequence of hostilities or warlike operations."

The *Llama* sailed from New York for Copenhagen on October 14, 1915. She was routed "via Kirk-wall," pursuant to a prior arrangement made by her owner, the Standard Oil Company, so that her documents could be examined. In pursuance thereof,

and as had been done on a previous voyage of the *Llama*, she was, on October 29, 1915, hailed and stopped by the British cruiser *Virginia*, and boarded by a lieutenant and four men. After the examination of her papers, which showed the vessel was duly routed "via Kirkwall" the *Llama* proceeded, the lieutenant and his party remaining on board. He had been directed by the *Virginia* (fol. 349) to see that the *Llama* keep North of Scule Skerry and North Rona, well-known landmarks, and not to pass between the islands at night.

Subject to these general directions, the captain of the *Llama*, as would appear from the absence from the log of anything indicating a departure from his previous conduct, laid off, entered all courses, and gave directions, the entries in the log being: "6.59, Stopped by British cruiser in Lat.  $58^{\circ}.56$  N., Long.  $11^{\circ} 58$  W. 7.30, British naval officer boarded ship with prize crew. 7.31, Eng. aft speed ahead. 7.35, Received order from cruiser to proceed. \* \* \* 8.10, Eng. full speed ahead. \* \* \* 10.30, Hoisted ship's number to British cruiser." The log entries contain the usual recital by name of the ship's officers on watch and of the ship's men on the lookout. Other than the above the log contains no entry or reference to the cruiser or of the officer and his men aboard the *Llama*. The entry of the 30th records that on that night North Rona was reached, viz: "10.35, North Rona abeam dist. off 9/," where the *Llama* hove to for the night at the Noup Head. From Noup Head there were two courses to Kirkwall, one called the Fair Island passage, the other, which the *Llama* took, was called the Westray Firth. The proofs show that the Master of the *Llama* had taken this later passage on

the previous voyage, and that the British officer on board had never taken it.

On the next morning while the *Llama* proceeded through the Westray Firth, where there was an open leeway of some four miles, she struck a submerged but charted reef and stranded. The time was daylight, and the sea conditions, as shown by the log, were "moderate sea, clear," and the entry in the log "9.07, Struck a reef in Westray Firth."

On November 13, 1915, Clinch, the Master of the *Llama*, appeared before the American Consul at Dundee, Scotland, and made oath to a marine protest of the loss, wherein his account thereof was given, as follows:

"The said ship proceeded on the said intended voyage as above stated until she reached a point about 400 miles westward of the Orkney Islands, where she was boarded by a British Naval Prize Crew on the morning of October 29th, Noup Head of Westray was made about four miles to Northeast about 8 p. m. On the evening of the 30th the Master decided to lie off land until daylight; that on Sunday the 31st day of October, 1915, at 8 a. m., the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction, blowing gustly and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fair way down the firth. The vessel was holding a course South magnetic which was considered safe by the Master and by the naval officer in charge of the prize crew. The vessel was proceeding at full speed 8 knots, when about half mile southwest of the Skerries, which lie off Fersness, Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast."



In addition to the Master, John Caldwell, First Assistant Engineer (fol. 350), and the carpenter and some seamen, all unnamed, joined under oath in this account of the ship's mishap.

On November 2, 1915, the Master appeared and made statement under oath, at a hearing had by the Deputy Receiver of Wrecks, held in pursuance of the British Shipping Act of 1894, wherein he stated:

"12. That the said ship proceeded on the said intended voyage as above stated until she reached a point about 600 miles westward of the Orkney Islands when she was boarded by a British naval prize crew on the morning of October 29th. Noup Head of Westray was made about four miles to northeast about 8 p. m. on the evening of the 30th. Deponent decided to lie off land until daylight.

"13. That on Sunday, the 31st day of October, at 8 a. m., the tide at the time being ebb, the weather slightly hazy and the wind in the southerly direction blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the Firth. The vessel was holding a course South magnetic which was considered safe by deponent and by the naval officer of the Prize Crew. Vessel was proceeding at full speed—eight knots, when about a mile southwest of the Skerries, which lie off Berskness Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result.

\* \* \* \* \*

"18. That, in deponent's opinion, the cause of the casualty was a submerged and uncharted rock and it could not have been avoided."

From the above extracts it will appear that the loss of the *Llama* as made out by contemporaneous written statements of her log and officers, was due to a marine peril, to wit, "a submerged and un-chartered rock," and that when the ship was struck the vessel was holding a course "which was considered safe by the Master," and that "it could not have been avoided." The physical fact being that the boat was lost by reason of its stranding, and stranding being *prima facie* a marine peril, it follows the burden is on the ship's owner to show that the stranding was caused by one of the war risks insured against as heretofore quoted. *Monroe v. War Risk Ass'n*, 34 Times L. R. 331. This burden the Court below was of opinion the insured met, finding in substance that at the time of the stranding the *Llama* was controlled and navigated by the British lieutenant, who boarded her.

After a study of the proofs we reach a conclusion different from that of the Court below, and that in the light of the facts and law, the libel should be dismissed.

In reaching that conclusion we start, not only with the *prima facies* against the *Llama* arising from her loss by a marine peril, but with a heavy burden of proof arising against her by reason of the fact that no contention, assertion, or even suggestion was made by the captain, when he was called upon to account for the stranding, of any dominating control by the British officer. The silence of the log on that point is highly significant. If control of his (fol. 351) ship was taken away from the captain; if its courses were being determined by an alien officer; if its navigation was being directed; if a log is, as its sphere is, to record the history of the voyage, why should it be

silent on such an all-important thing as the control and navigation of the ship; why should it continue to be written just as it had been written before? Indeed, if we gather an account of subsequent events solely from the log entries we would not know whether the British lieutenant remained on board, for after the log's entry that he boarded the vessel there is not only no statement of his remaining aboard, but the subsequent entries, viz, "Received orders from Cruiser to proceed" and "Hoisted ship's number to British Cruiser," show that all the directions the captain felt worth while for entry in the log referred to those received from the cruiser and not from the lieutenant. Seeing then that both in the comparative privacy of the log and before any situation arose suggesting the recording of evidence on the subject of alien control of the ship, no entry was made indicating such control, we turn to November 2, 1915, when the next evidential statement was made by the captain. The *Llama* had been lost, and he then appeared before the British official empowered by the British Government (see Sec. 517 of Merchant Shipping Act, 1894) to investigate the disaster.

Here every circumstance, the opportunity of clearing himself from all blame and responsibility for the stranding, the obligation of his oath, impelled the captain to give a truthful account of how and why the stranding took place. Presumably moved by the two considerations of self-exculpation and truth disclosures, and knowing, as the statement shows he did, that the *Llama* carried insurance against war risks but none against marine, the captain made no statement that he or the vessel was under compulsion, but on the contrary states that her course was one which both he and the British officer considered

safe; that she grounded on an uncharted rock and in answer to the inquiry of "the cause of the casualty," he stated that in his opinion "the cause of the casualty was a submerged and uncharted rock and it could not have been avoided." We have here then the deliberate, sworn statement of the captain exculpating himself on the ground the *Llama* had struck an uncharted rock while sailing on a course which he approved and which had also the approval of the British officer, a clear case of loss from a marine peril, and with no suggestion of loss from a war peril and this statement made with knowledge that the vessel had no marine peril insurance, but had war peril insurance. Coupled with the significant absence from the log of any suggestion of control of the (fol. 352) *Llama* by the British officer, the sworn statements made by the captain in this casualty inquiry, alleging the loss was a marine one and with no suggestion of control by the British officer, we have a case of contemporaneous and evidential statements of such convincing nature as made the case one where a contrary state of facts, later set up, should be not only of the most convincing character as to their truth but also explanatory of the silence of the captain when every surrounding circumstance called on him to then make such a statement as he now makes for the libellant.

It is said in his behalf that the captain was averse to making any statement before the British tribunal implicating the British officer by showing the latter was directing the course of the *Llama* and was responsible for her standing. To this, an answer would be that if the captain's statement described the true situation, there was no call to shift the blame from him to the British officer, for that state-

ment placed the blame not on faulty navigation of either but on the fact of a submerged and uncharted rock. But the case did not stop with his statement made before an alien official, for on November 13th, the captain, with an officer and members of the crew, appeared before the American Consul at Dundee and again, under oath, entered a marine extended protest wherein he made no assertion that the ship was under the control of the British officer but, after stating, as he had done in the wreck inquiry, that on the night before "the master decided to lie off the land until daylight" the *Llama* proceeded the next morning on her course and that when she stranded, "the vessel was holding a course South magnetic which was considered safe by the master and by the naval officer in charge of the Prize Crew," he alleged she "suddenly grounded on a submerged and uncharted rock."

If these several statements be accepted as a true and full account of the stranding, we have here a loss from a marine peril and resulting from following a course in which both the captain and the British officer concurred. They suggest no dominating control, no superseding of the captain by the British officer, but on the contrary, the selection of the course by the captain and the justification of that selection by the concurrence of the British officer and so regarded we have the case of a peril and a loss due, not to a war risk, but to a marine peril, for the concurrence of the two men in the course was not something done by stress of war, but at most by the concurrent mistake of two men who were attempting to safely navigate a ship through an open fairway but who mistakingly stranded (fol. 352½) her on a submerged, unknown reef. Taken at its most, the

captain thought he was right, the British officer thought the captain was right, but in point of fact, both were wrong. There was nothing partaking of war in the ship going on a submerged, uncharted rock owing to the miscalculation of those directing her course and therefore the cause of the loss, viz, the stranding, the marine character of the peril, is not affected by the one directing the course, whether his or their uniforms were those of a mariner or a naval officer. The stranding was the dominant casual factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint, but mistaken, navigation of the captain and the British officer.

Accepting then, these contemporaneous statements by the captain of the circumstances as correct, his testimony given nearly six years after to the effect that the navigation of the ship was taken out of his hands by the British naval officer and the course over the submerged reef was one selected by the latter and the ship constrained to follow it without his, the captain's concurrence, is not convincing. There is no explanation by the master of his change of position or as to why he did not enter in the log or in the wreck inquiry or consular protest, assert or even suggest, what he now contends, namely, that the British officer was navigating the *Llama* and stranded her on the reef. Standing alone, these circumstances are such as to cause us to question his later testimony, but when to this is added the fact that the captain had taken the *Llama* through the Westray Firth before but the British officer had never been through it; that the captain admits that when the officer came aboard, he made no statement that he himself was to navigate the vessel or give any instructions to his

own men that they were to do so; the captain's self-contradiction on the stand in testifying first, that he had not been court-marshalled and later admitting that he had been court-marshalled for drunkenness, and in further view of the testimony of the British officer that he did not oust the captain's control over the navigation of the ship, we are clear that the libellant has not met the burden resting upon it, of showing that the *cuasa causans* of the loss was a war risk and not a marine one.

We may refer to other proofs in the case supporting both sides, all of which have had our attention; the testimony of Jansen, the third officer of the *Llama*, in support of the captain's later version (fol. 353); the absence or failure to account for the loss of the chart books in which there might have appeared or been wanting the figuring of courses in confirmation or contradiction of the captain's testimony that the British officer did the charting; and of the fact that while Caldwell, the first assistant engineer, the carpenter and some seamen, were present and were sworn before the Consular inquiry and joined in the account of the loss as then stated by the captain, none of them were called or their absence accounted for in the present proceeding.

The view we have taken of the situation, namely, that the libellant has not satisfied us that the *Llama* was being navigated by the British officer, when she stranded, renders it needless to refer to the many authorities cited, all of which have had our careful examination.

The cause will therefore be remanded to the Court below with directions to vacate its decree and dismiss the libel, the libellant bearing the costs in this Court and in the Court below.



STANDARD OIL COMPANY OF NEW JERSEY, AS  
OWNER, ETC., OF THE STEAMSHIP LLAMA, *v.*  
THE UNITED STATES OF AMERICA.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

No. 169. Argued January 14, 1925.—Decided February 2, 1925.

1. A vessel insured by the United States against "takings at sea, arrests, restraints and detentions of all kings, princes, and peoples," etc., "and all consequences of hostilities or war-like operations," was stopped by a British war ship and boarded by a British naval officer with armed men; her navigation was resumed by her master, but under the general control of the officer; she struck a rock and was lost. *Held* that the proximate cause was the seizure and paramount control (insured against), and not the marine peril. P. 77.
2. When the United States goes into the business of insurance (Act of Sept. 2, 1914, c. 293, § 5,) issues policies in familiar form and provides that, in case of disagreement, it may be sued, it must be assumed to have accepted the ordinary incidents of suits in such business, including the payment of interest. P. 79.

291 Fed. 1, reversed.

CERTIORARI to a judgment of the Circuit Court of Appeals reversing a decree of the District Court awarded against the United States, as respondent, in a libel on two war risk insurance policies, issued under the War Risk Insurance Act of September 2, 1914.

*Mr. Cletus Keating*, with whom *Mr. John M. Woolsey* was on the brief, for petitioner.

*Mr. J. Frank Staley*, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* and *Mr. Albert Ottinger*, Assistant Attorney General, were on the brief, for respondent.

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a libel upon two policies of insurance issued by the Government insuring respectively the steamship *Llama* and her freight and advances against war risks.



Act of September 2, 1914, c. 293, § 5; 38 Stat. 711, 712. The libellant recovered in the District Court, but the decision was reversed by the Circuit Court of Appeals. 291 Fed. 1. A writ of certiorari was granted by this Court. 263 U. S. 694.

The risks assumed by the insurer in the two policies included "takings at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition or quality soever, and all consequences of hostilities or war-like operations, whether before or after declaration of war." The loss happened as follows. On October 14, 1915, the *Llama* sailed from New York for Copenhagen with a cargo of oil, routed via Kirkwall that her papers might be examined. On October 29 she was stopped by the British warship *Virginia* and was boarded by a lieutenant and four men, all armed, and her papers examined. The result was signalled to the *Virginia* and the lieutenant directed to proceed to Kirkwall, which was 400 miles to the east on the farther side of the Orkneys, keeping to the northward of Scule Skerry and North Rona and not to pass between the islands at night. The steamer arrived off Westray Firth, one passage between the islands, on the night of October 30. The next morning it started on a course through Westray Firth but in a few hours struck a rock and was totally lost.

In defense it is argued that the proximate cause was a marine peril not covered by the policies and that the decision should be governed by *Morgan v. United States*, 14 Wall. 531; *Queen Insurance Co. v. Globe & Rutgers Fire Ins. Co.*, 263 U. S. 487, and other similar cases. But in those very strict applications of a well-known rule, however strong the motives of the insured or owners for acting as they did, the loss ensued upon their own conduct. But if a vessel should be taken from an owner's hands without his consent and should be lost while thus held by a paramount power, obviously a company that had insured

against such a taking could not look beyond and attribute the loss to a peril of the sea. Whatever happens while the taking insured against continues fairly may be attributed to the taking. That is a nonconductor between the insured and subsequent events. See *Muller v. Globe & Rutgers Fire Ins. Co.*, 246 Fed. 759, 763. *Cory v. Burr*, 8 App. Cas. 393, 398. *Andersen v. Marten*, [1908] A. C. 334.

The Llama at the time of the accident was under the paramount control and in the possession of the Virginia. We regard the differences between the testimony of the British officer and that of the master of the Llama as immaterial. The master, who was believed in the District Court, makes the intervention of the British lieutenant frequent, active, and the cause of a change of the course that the ship otherwise would have taken. But whether the intervention was more or less, if by mutual understanding, after a manifestation of armed force, the last word was with the lieutenant, it does not matter whether he uttered his commands often or rarely. The lieutenant while denying that he had a general charge of the navigation testifies again and again to facts that show that he assumed and was recognized to be the ultimate power. After his signalling his ship the master, he says, asked him if he could proceed "So I said, 'Yes.'" He looked at the course to see that it complied with the orders from his captain. "The captain approached me and asked my permission to go through the Westray Firth . . . I gave my consent." If the captain had suggested a course that the lieutenant did not approve, the latter said he assumed that he had power to correct it. He recognized that the vessel might possibly be the subject of prize court proceedings. Some comment was made upon the meagreness of the entries in the log as to any control of the master's conduct. But after an entry 'British naval officer boarded ship with prize crew' nothing more was necessary to show what the master understood his position

to be, whether in fact the crew was a prize crew or not. As was said of similar facts in *Muller v. Globe & Rutgers Fire Ins. Co.*, 246 Fed. 759, 762, that the vessel and her cargo were seized, arrested and detained within the meaning of the policy we think too plain to require much more than mention. It no more mattered that the master took an active part in the navigation than that the ship still was steered by one of the crew.

As the vessel had passed out of the owner's control before the accident by a seizure within the policy and as the loss happened while the vessel thus was held by an adverse hand, it follows that the libellant must prevail.

Some question was made as to the allowance of interest. When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business. The policies promised that claims would be paid within thirty days after complete proofs of interest and loss had been filed with the Bureau of War Risk Insurance. The proofs seem to have been filed on January 11, 1917. Interest at six per cent should be allowed from February 11, 1917. The decree of the District Court will be corrected so as to allow for total loss of the Llama..... \$115,000.00

With interest at six per cent. from February 11, 1917.

Total loss of the freight, &c..... 44,686.82

With interest at six per cent. from February 11, 1917.

Expenses incurred under sue and labor clauses ..... 2,270.34

With interest at six per cent. from February 11, 1917.

Thus modified the decree will be affirmed.

*Decree of Circuit Court of Appeals reversed.*

*Decree of District Court modified and affirmed.*

Counsel for Parties.

267 U. S.

MR. JUSTICE McREYNOLDS is of opinion that the decree of the Circuit Court of Appeals should be affirmed.

MR. JUSTICE SUTHERLAND took no part in the decision.

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